IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

WALTON N. MOORE DRY GOODS CO. (a corporation), J. H. NEWBAUER & COMPANY (a corporation), G. W. REYNOLDS CO., INC. (a corporation), and L. DINKELSPIEL CO., INC. (a corporation), *Appellants,* vs. A. F. LIEURANCE and PHILIP A. HERSHEY as Receivers of R. A. Pilcher Co., Inc. (a corporation), Bankrupt, *Appellees.*	In Equity No. 5660

REPLY BRIEF OF A. F. LIEURANCE, RECEIVER, AND EDWARD R. ELIASSEN, ATTORNEY FOR THE RECEIVERS OF R. A. PILCHER CO., INC.

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Subject Index

Table of Authorities Cited

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The title of this cause, as set forth in the Transcript of Record, and in Appellants' Opening Brief filed herein, is incorrect in this:

FIRST: It designates R. A. Pilcher Co., Inc., as a bankrupt;

SECOND: It designates A. F. Lieurance and Philip A. Hershey as Receivers of R. A. Pilcher Co., Inc. (a corporation), Bankrupt, as Appellees; and

THIRD: It designates Philip A. Hershey as a Receiver.

The facts are:

FIRST: This is not a proceeding in bankruptcy, but a proceeding in equity;

SECOND: Neither one of these gentlemen is a Receiver, nor has he ever been a Receiver, of R. A. Pilcher Co., Inc. (a corporation), Bankrupt. This is a Receivership of R. A. Pilcher Co., Inc., and the Receivers are A. F. Lieurance and Arthur F. Gotthold. Further, A. F. Lieurance, Receiver of R. A. Pilcher Co., Inc., and Edward R. Eliassen, Attorney for the Receivers of R. A. Pilcher Co., Inc., are the Appellees.

THIRD: Philip A. Hershey is not now, nor has he ever been, a Receiver, either of R. A. Pilcher Co., Inc., or of R. A. Pilcher Co., Inc. (a corporation), Bankrupt, and is not one of the Appellees herein.

We accept as substantially correct the statement in Opening Brief for Objecting Creditors, as set forth on pages 1, 2 and the first paragraph on page 3 thereof, except the statement in the last paragraph on page 2 thereof wherein they state that A. F. Lieurance * * * employed Edward R. Eliassen to act as *his Attorney* as *one of the two Receivers,* and, in this regard, we state that said A. F. Lieurance employed Edward R. Eliassen to act as the Attorney for the two Receivers, as appears in the "Order in Ancillary Proceedings Appointing Receivers etc.," set forth on pages 31 to 36 inclusive, Vol. I of Transcript, wherein it appears that a verified petition of A. F. Lieurance was filed on behalf of himself and Arthur F. Gotthold

petitioning for the appointment of said A. F. Lieurance and Arthur F. Gotthold *as Receivers* of the Defendant R. A. Pilcher Co., Inc., in said proceeding in Ancillary Proceedings, and that Edward R. Eliassen, Esq., represented the said Petitioner; and, as further shown by the "Order Continuing Receivers and Making them Permanent," appearing on pages 36 to 39 inclusive, Vol. I of the Transcript, wherein it appears on page 38: "Four. ORDERED, ADJUDGED AND DECREED that the appointments of Philip A. Hershey & Co., as Accountants, and Edward R. Eliassen, Esq., as Attorney for the *Receivers,* be and they are hereby confirmed and approved." (Italics ours.)

QUESTIONS INVOLVED IN THIS APPEAL.

As to the questions involved in this Appeal, it is our understanding that they are as set forth in the Opening Brief for Objecting Creditors under this heading, except that the allowance of $30,000.00 fixed and allowed by the Judgment and Decree of the Trial Court, as compensation to be paid Edward R. Eliassen, was fixed and allowed to him as Attorney for *Receivers* A. F. Lieurance and Arthur F. Gotthold.

STATEMENT OF THE CASE.

We deem the STATEMENT OF THE CASE contained in Opening Brief for Objecting Creditors not only incomplete, but, in many instances, inaccurate and unsupported by the record, and, therefore, on behalf of the Appellees, we offer the following:

The R. A. Pilcher Co., Inc., was a merchandising institution, existing under the laws of the State of Delaware. It was engaged in the business of conducting a chain of Department Stores, all of which were located in the States of Oregon, Washington and California, to wit: Three stores in California, located at Stockton, Turlock and Oroville; seven stores, located in the following towns in Washington: Yakima, Tacoma, Bremerton, Monroe, Aberdeen, Everett and Wenatchee; six stores, located in the following towns in Oregon: Klamath Falls, Eugene, Pendleton, Roseburg, Portland and Albany. These stores were classed as general merchandise stores, and their stocks were made up of dry goods, shoes, clothing, ladies' ready to wear, men's ready to wear, men's furnishing goods, ladies' and children's furnishing goods, notions, bedding, hats, caps and other lines usually found in a department store.

R. A. Pilcher had formerly been in the employ of J. C. Penney Company, a company engaged in conducting a system of so-called chain stores.

When R. A. Pilcher Co., Inc., became financially embarrassed, a meeting of its creditors was called and took place in New York City. The total amount of indebtedness of R. A. Pilcher Co., Inc., at that time was approximately $725,000.00. Its assets, including money in bank, merchandise, store fixtures, etc., were believed to exceed in value the total amount of its indebtedness. Very shortly before that time, one or more of its stockholders had purchased additional stock to the amount of $75,000.00, and the whole of that amount was then on deposit to its credit in a

New York bank. But it was then indebted to that same bank in an amount a little in excess thereof.

R. A. Pilcher represented to the creditors that he believed certain stockholders would purchase enough additional shares of stock to enable him to refinance the concern satisfactorily and continue its business, if the creditors would agree to an extension of one year's time for the payment of their respective debts. A few attachment suits by small creditors had already been commenced and other similar suits were being threatened, and the great bulk in amount of creditors concluded that it would be advisable to have temporary Receivers appointed, until an agreement for the aforesaid extension of one year's time for the payment of debts (which they favored) could be circulated among and signed by the respective creditors for the purpose of enabling Mr. Pilcher to reorganize and refinance R. A. Pilcher & Co., Inc., as aforesaid.

Accordingly, this suit was thereupon originally instituted in the United States District Court in and for the Southern Division of the State of New York, and Mr. A. F. Lieurance and Arthur F. Gotthold were appointed temporary Receivers. Mr. Lieurance had, for a number of years, been a stockholder in the J. C. Penney Co., and had been in its employ and thoroughly acquainted with the chain store business, and Mr. Walton N. Moore, a member of the Creditors' Committee of R. A. Pilcher Co., Inc., strongly urged him to accept the co-receivership with Mr. Gotthold, and he consented to do so. Who suggested his name to the Committee, however, was never known to him. Promptly after the appointment of A. F. Lieurance

and Arthur F. Gotthold, as temporary Receivers in New York, Ancillary Proceedings were taken in the States of California, Oregon and Washington.

At the New York meeting the creditors had elected a committee to look after their affairs, and William Fraser was elected chairman of the committee, and Messrs. McManus, Ernst & Ernst acted as the legal advisors of the committee and as attorneys for the plaintiffs in the original suit, as well as for Arthur F. Gotthold, the New York Receiver.

The creditors of the western jurisdictions also appointed a committee to represent them, and Mr. Walton N. Moore of the Walton N. Moore Dry Goods Co. became the chairman of that committee as well as a member of the original New York committee which represented all the creditors. The Walton N. Moore Dry Goods Co. was the largest western creditor. Its claim was approximately $30,000.00. This claim, however, had been guaranteed by one J. C. Brownstone, a large stockholder of the R. A. Pilcher Co., Inc., and, at the time of the hearing in this matter before the Special Master, Mr. Walton N. Moore did not know whether this claim of the Walton N. Moore Dry Goods Co., so guaranteed by J. C. Brownstone, had been paid in full or not. The Walton N. Moore Dry Goods Co. was a member of the Board of Trade of San Francisco, and Mr. Moore suggested to Mr. Lieurance when he and Mr. Lieurance first met that he thought it would be in the interest of all concerned if Mr. Lieurance as Receiver would handle the receivership in the western jurisdictions through the San Francisco Board of Trade and employ its Attorneys to

represent him as Receiver, and thus secure the benefit of their wide and varied experience in receivership matters. Mr. Moore gave as his reason for this suggestion that the San Francisco Board of Trade was owned and controlled by the wholesale and manufacturing interests of San Francisco, and that, as a great number of its members were creditors of the R. A. Pilcher Co., Inc., it was only fair and right that their organization should handle this business. Mr. Moore also suggested that Mr. Lieurance use the Attorneys employed by the Board of Trade.

Mr. Lieurance did not immediately refuse to accept Mr. Moore's suggestion, but informed him that he, Mr. Lieurance, would think the matter over carefully, and give Mr. Moore a decision at a later date. After thinking the matter over carefully, and taking into consideration the fact that he, Mr. Lieurance, was the choice for Receiver of the creditors who attended the meeting at the inception of the receivership, he felt that it was his duty to handle this business in a manner in which he felt the best results could be obtained. He also felt that if it had been the desire of the creditors to have the San Francisco Board of Trade handle the matter, they would have selected it as Receiver instead of selecting him. Mr. Lieurance further took into consideration the fact that there were other Boards of Trade or Credit Men's Associations located in other Cities, whose members were creditors, and whom he felt that he would discriminate against in employing the San Francisco Board of Trade, and/or its Attorneys, and he also felt that since it was the purpose and plan of the stockholders to re-

finance the business, and make a settlement with the creditors, that the interests of both the stockholders and the creditors would best be served by his keeping the business of the receivership separate and apart, and thus avoid further complications, and Mr. Lieurance thereupon declined to accept the said suggestions of Mr. Moore concerning the Board of Trade of San Francisco, and the employment of the Attorneys of the Board of Trade as his attorneys in said receivership.

Mr. Lieurance thereupon employed Mr. Edward R. Eliassen, of Oakland, California, as Attorney for the Receivers in the western jurisdictions, and rented offices in the Central Bank Building, in Oakland, California, on the same floor as and adjacent to the offices of Mr. Eliassen. It is not admitted by Mr. Eliassen that this was his first experience as Attorney for a Receiver, as is stated in Appellant's Opening Brief. The fact is he testified that he had theretofore served as Attorney for receivers in Bankruptcy matters. (Transcript of Record, Vol. II, page 494.)

It is admitted, however, by counsel for the Objecting Creditors that the receivership was *very efficiently* conducted, and it is also admitted by Mr. Moore and other members of the Creditors' Committee, not only that *nearly all* of the work of the receivership had been done in the *western jurisdictions,* but that it had been done with *very creditable results.*

Mr. Lieurance at once employed Mr. Philip A. Hershey, an expert public accountant (which employment was later approved by an Order of the Court) to open a set of books, establish an accounting system, and to

keep proper and complete records and accounts for the administration of the receivership, and to perform such other services as were required by the Receivers in connection with the administration of said receivership, and to do and perform, as such Accountant, all of the acts and things by him performed under said employment for the Receivers in the western jurisdictions. The work performed by Mr. Hershey is shown in his STATEMENT OF SERVICES, being Receivers' Exhibit No. 4, and set forth at pages 785 et seq., Vol. II of the Transcript.

Appellants contend that Mr. Hershey was employed under a contract at a fixed salary of $350.00 per month. (See Transcript of Record, Vol. II, page 809.) Mr. Hershey was not thus employed, as clearly appears from the testimony of Mr. Lieurance, commencing at the bottom of page 244, Vol. I, Transcript of Record, to the middle of page 246 of the same Volume.

Mr. Hershey had a large amount of other business, some of which he continued to take care of, while serving as Accountant for the Receivers in this matter, but much of which he found it necessary to postpone in order that he might give his time and attention to the work connected with this receivership.

Receiver Lieurance pursued the usual practice in chain stores of requiring all sales to be made for cash only, and of furnishing each store with blanks upon which it was required to make a daily report, and to record in the proper column on this report the daily sales, and in another column prepared for the purpose to report their local expenditures which included freight, express, light, water, heat, power, stamps,

drayage, cartage, disposal of waste, salaries to employees, and other minor expenditures for local supplies such as sweeping compound, brooms, repairs to light and plumbing fixtures, and so forth. Most of these items were required to be paid for by check on their local banks where they kept a small deposit for that purpose. However, these cancelled vouchers, together with their bank statements, were subject to withdrawal only by Receiver Lieurance, and were regularly collected at his general office in Oakland for the purpose of checking up the daily reports and of keeping the records and accounts of the Receivers in the office at Oakland. The managers of all stores were further instructed and required to retain in their cash drawers two hundred dollars as a revolving fund and change, and to deposit their daily sales in their local banks to the account of "R. A. Pilcher Co.—A. F. Lieurance Co.—Receiver," and to send each day to Receiver Lieurance at his Oakland office a draft for the full amount of each day's sales less the local daily expenditures, all of which were accounted for on the daily reports.

Some assistants were employed by Mr. Hershey to aid him in his work. He opened journals in which were recorded the sales of stores, the cash that was received, the checks that were drawn, the bank deposits that were made, petty cash expenditures, the merchandise purchases, the merchandise transfers, and a general journal for the entry of such items as would not appear in the previous journal; also set up a general ledger for each of the sixteen stores; also set up a set of books for the office of the Receiver,

those books consisting of the journals before mentioned and also a journal and ledger for that general office. The keeping of these books in this manner rendered it convenient for the Receiver subsequently to make separate accounts for each of the four western jurisdictions, if it had become necessary so to do, and such separate accounts were rendered in each of the four western jurisdictions.

Most of the transactions in all of the different stores were on a cash basis, but there were a great number of transfers of merchandise from the stores in one jurisdiction to the stores in another jurisdiction. The accounting system so installed by Mr. Hershey was such that he was able at any time, upon request, to furnish to the Receivers an accurate statement of the condition of all of these sixteen stores in the western jurisdictions. Mr. Hershey was engaged from five to ten days in formulating and installing this system. A bookkeeper was employed by the Receivers, at a wage of $27.50 per week.

Arthur F. Gotthold, as Receiver, had employed in New York City the expert accounting firm of S. D. Leidesdorf & Co., to do the work for the Receivers in the eastern jurisdiction. The accounting work, however, in the eastern jurisdiction was much less burdensome and extensive than that required in the western jurisdictions, as all of the accounting work relating to the sixteen stores in the western jurisdictions was done by Mr. Hershey; that said firm of S. D. Leidesdorf & Co. were paid for their services as expert accountants in the eastern jurisdiction the sum of $7,700.00. All of the books of account of the R. A. Pilcher Co.,

Inc., having to do with its affairs up to the time of the inception of the receivership were in New York City, and were turned over to S. D. Leidesdorf & Co., as a considerable number of the creditors of the R. A. Pilcher Co., Inc., were within the eastern jurisdiction.

Mr. Lieurance endeavored constantly for months, but without success, however, to get from his co-Receiver in New York, and Attorney Ernst, information which was essential to round out the accounting here.

The appointment of Arthur F. Gotthold and A. F. Lieurance as temporary Receivers was made by United States District Judge Augustus N. Hand on June 3, 1926, and shortly thereafter, to-wit: on or about June 9, 1926, their appointment as temporary Receivers was made by the respective western jurisdictions.

Mr. Lieurance immediately proceeded to organize the conduct of the business of the sixteen stores constituting the chain. Shortly thereafter, Mr. Ernst made a visit to California and held a conference with Mr. Lieurance and Mr. Eliassen in relation to the condition and the conduct of the business, and he reported back to Mr. Gotthold in New York City. An understanding was reached between the Receivers to the effect that Mr. Lieurance had assumed and would continue the direction of the actual conduct of the business in all of the stores and that Mr. Gotthold had assumed and would continue to direct all affairs connected with the receivership which might arise in the New York jurisdiction. Of course, the control of the receivership was to be joint nevertheless.

About the first of October, 1926, Mr. Lieurance, after conducting the business for four months, became

confident that it would be impossible for Mr. R. A. Pilcher to secure sufficient financial assistance to settle with the creditors and take back the business, and so advised his co-Receiver, and Mr. Pilcher, and Messrs. McManus, Ernst & Ernst, Attorneys, that it would be advisable to sell the stores as *going concerns,* if possible.

On August 31, 1926, Mr. Lieurance had on hand as assets of the receivership net cash amounting to the sum of $228,178.08. At that time he reported this fact to his co-Receiver, Arthur F. Gotthold, and Messrs. McManus, Ernst & Ernst, the Attorneys in New York City for the Receivers, and suggested that if the business was to be continued for an appreciable length of time, pending the refinancing of the business by the stockholders of R. A. Pilcher Co., Inc., the greater part of the cash on hand would have to be expended for merchandise to supply the stores for the coming fall season.

Receiver Gotthold and Attorneys McManus, Ernst & Ernst in turn conferred with a number of large eastern creditors and Receiver Lieurance conferred with a number of the large western creditors, and it was found that the consensus of opinion among the creditors was that the business could not be refinanced and that the cash on hand should not be expended for merchandise to replenish the stocks in the stores for future operations, and that unless the stockholders of R. A. Pilcher Co., Inc., gave definite assurance that the business could be refinanced, or a satisfactory settlement made, the cash then on hand should be preserved for distribution among the creditors, together

with the proceeds of the sale of the remainder of the property, after payment therefrom of expenses of the receivership, including Receivers' fees and Attorneys' fees. It was also the consensus of opinion of the creditors that an effort should be made to sell the stores as going concerns.

This plan was adopted and Mr. Lieurance proceeded at once to secure purchasers. To this end he composed letters containing full information dealing with the sixteen stores, both individually and collectively, and sent copies thereof not only to prospective purchasers who had made inquiries concerning the sale, but mailed copies thereof to merchants throughout the country who had made no inquiries but who were in the merchandising business and whom he felt might be interested in obtaining one or more of the stores.

Where personal contact with those prospective purchasers was possible, he called upon them personally, and, where such contact was impossible, he communicated with them both by letter and telegram. While thus making every possible effort to make the best possible sales of the stores, he kept all of the sixteen stores running, giving to these matters his services, not only during business hours, but at night and upon most Sundays and holidays. As a result of his efforts, all of the stores were sold as going concerns, some of said stores being sold separately and some in groups, the last of said sales being completed about November 3, 1926, and all of said sales being made as of August 31, 1926.

A difference of opinion had arisen between the two Receivers as to the best method of making the sales. Receiver Gotthold contended that the method of sale which would bring the best results would be to call for bids for all of the stores together as a chain; whereas, Receiver Lieurance insisted that the best price and results could be obtained by calling for bids for the stores either separately, or in groups, or as a whole, and all as going concerns. The latter plan was adopted.

Notices of Receivers' Sale were accordingly published in various newspapers throughout the four western jurisdictions, inviting prospective purchasers to present sealed bids for each store separately, or for groups of said stores, or for all of said stores as one group. Numerous bids were received, and, upon the same being opened, the highest of said bids were accepted, subject to confirmation and approval by the various Courts in the western jurisdictions, and the aggregate gross amount received for all of the stores was the sum of $257,600.00.

While efforts were being made by Mr. Lieurance in the western jurisdictions to sell these stores, Mr. Gotthold and their Attorneys, Messrs. McManus, Ernst & Ernst, were endeavoring to sell them in New York.

During this time, Mr. Lieurance kept in constant telegraphic communication with his co-Receiver, Mr. Arthur F. Gotthold, and with Messrs. McManus, Ernst & Ernst, and learned from them that the best offer they had received was $325,000.00, and this was for all of the assets of the R. A. Pilcher Co., Inc., including not only the sixteen stores but also including

the cash on hand, amounting to $228,178.07. Deducting the amount of cash on hand from the above mentioned bid of $325,000.00, leaves $96,821.93 as the best offer received in the East for the stores. The total amount received for the stores upon sale thereof as above mentioned is $257,600.00, or $160,778.07 more than the best offer received in the East for the stores, all of which fully justified the adoption of Mr. Lieurance's plan for the sale of the stores.

The stores had been conducted by the Receivers during a period of practically five months, to-wit: from June 3, 1926, to November 3, 1926, the date of the sale of the last store. While the conduct of these stores from August 31, 1926, until November 3, 1926, in order that they might be sold as going concerns, inured to the benefit of the purchasers to the extent of the net profits made on sales over the counter during that period, after payment of all carrying charges and running expenses, and after payment for all merchandise purchased during said period, still the greater benefit inured to the estate and the creditors thereof by reason of the stores having been kept open and continued as going concerns.

Shortly after this suit was originally commenced in the New York jurisdiction to procure the appointment of temporary Receivers, it was deemed necessary for the creditors to cause, and they did cause, bankruptcy proceedings to be instituted against R. A. Pilcher Co., Inc., in New York City in order to destroy prior liens of a number of small attaching creditors in the various jurisdictions. Afterwards, it was concluded by all parties concerned therein, how-

ever, that it would be equally economical and more advantageous to the creditors of R. A. Pilcher Co., Inc., to keep the administration and liquidation of its affairs through the receivership already in existence instead of transferring its operation to the bankruptcy court, and thus to a Receiver or Trustee to be appointed therein. Hence, no further steps were ever taken by the creditors to pursue the bankruptcy proceedings.

AMOUNT AVAILABLE FOR CREDITORS.

The net amount of money obtained by the Receivers from the liquidation of all the assets of the receivership, and which thus became available for the payment of creditors, after there should first be deducted therefrom the fees for the Receivers and their Attorneys, and other necessary expenses of the receivership, was the sum of $466,980.40.

The total amount of all creditors' claims, general and preferred, filed with the Receivers was $751,-860.09; and the total amount of these claimed as general claims was $746,043.75, and the amount allowed on the general claims was $718,794.12.

The total amount of preferred claims filed with and allowed by the Receivers was $5,816.34, and these were paid in full by the Receivers, and a dividend of 50% was paid to creditors on the amount of general claims allowed, that is to say, on $718,794.12.

TRIP OF MR. HERSHEY TO NEW YORK CITY.

This trip by Mr. Hershey was absolutely necessary, and authority was obtained from the Court to send Mr. Hershey on to New York. The books of R. A. Pilcher Co., Inc., which were all kept in the City of New York, had been permitted to lapse on the 28th day of February, 1926; that is to say, had not been kept up to date subsequent thereto and prior to the appointment of the Receivers on June 3, 1926.

Only a part of the claims against the Estate had been filed with Mr. Lieurance, and the remainder had been sent to New York; also, many of the claims in the District of California had been filed with the San Francisco Board of Trade, and they, instead of filing these claims with Mr. Lieurance in California, had sent them to the Receiver in New York, thus causing delay and confusion. It was very difficult to coordinate the business of the Receivers with part of the claims in New York, and part of them in Oakland.

The original books of the Company being in New York, Mr. Lieurance had no means of checking the claims to determine their correctness. He made numerous attempts to get from his co-Receiver in New York information showing accurately the amount of indebtedness as shown by the books of the Company, and other information necessary to the handling of the claims. Being unsuccessful in obtaining this information, realizing that time was being lost, and that further complications would arise as a result of these records being scattered, Mr. Lieurance, with the authority of the Court, sent Mr. Philip A. Hershey, Accountant for the Receivers, to New York for the

purpose of going over the books of the Company, bringing the accounts up to date, checking them up with the claims, and doing whatever was necessary to get the accounts reconciled with the claims and know where things stood; to make an audit of the accounts, as shown by the books of the R. A. Pilcher Co., Inc., and obtain other necessary information in connection with the verifying of the claims that had been filed, and were still to be filed against the Estate.

Upon Mr. Hershey's arrival in New York, *he found that comparatively nothing had been done toward an audit of the books and accounts of the Company.* It required approximately two weeks for him, working day and night, to compile an accurate and authentic statement of the various accounts, as shown by the books of the Company, and he discovered, among other things, that the total liabilities of the Company were approximately $140,000.00 *more* than the reports from the East had theretofore shown.

Mr. Lieurance knew, and had known, that the books and records of the R. A. Pilcher Co., Inc., had been for some time in the hands of a firm of Accountants, who had been employed by Receiver Gotthold, to-wit: the firm of S. D. Leidesdorf & Co.; that some of the creditors were located in and around New York City. Knowing these things, he endeavored on numerous occasions to obtain from New York City the information above referred to, but was unsuccessful in his efforts. The answers he received to his requests were that the information was not ready. Mr. Hershey was away from Oakland on this trip during a period of a total of thirty-eight days. While in New York

City, he worked with S. D. Leidesdorf & Co. in their offices upon the books and records of R. A. Pilcher Co., Inc., for the purpose of obtaining all of the above mentioned information which Mr. Lieurance had been constantly seeking through correspondence, but was unable to obtain.

COMPENSATION OF THE RECEIVERS AND THEIR ATTORNEYS.

Certain conferences, and certain telegraphic and letter correspondence were had between the parties in interest in relation to the *ad interim* allowances on account of Receivers' fees and Attorneys' fees, which conferences and correspondence commenced before any of the applications were made in the western jurisdictions for such allowances, extended through the period while applications were being made in the western jurisdictions for such allowances, and beyond the time when the last of said *ad interim* allowances was made in the western jurisdictions.

In the "Objections and Exceptions to Final Account and Report of the Receivers, also to the Petition for Allowance of Further Fees and Compensation to Receiver Lieurance or to Edward R. Eliassen, Attorney for the Receivers," filed herein by the Objecting Creditors, they set up, in support of their said Objections and Exceptions, the aforesaid conferences and communications.

Much of this correspondence appears in the Transcript of Record, and is set forth in the Opening Brief for Objecting Creditors filed herein, at pages 13 to 38, inclusive, and, in relation to which corre-

spondence, they state in their Opening Brief, page 13, "The following telegraphic and letter correspondence between the parties in interest explains quite fully the manner in which the amount allowed by the trial court as fees to Receiver A. F. Lieurance and his Attorney, Edward R. Eliassen, was reached."

The Special Master eliminated from his consideration, so far as the final fixation of the fees of Receiver A. F. Lieurance, and his Attorney, Edward R. Eliassen, are concerned, all of the conferences and the communications above referred to, considering them immaterial (Transcript, Vol. I, page 237; also page 180), and it is therefore apparent that these communications and conferences do not fully or at all explain "the manner in which the amount allowed by the trial court as fees to Receiver A. F. Lieurance and his attorney, Edward R. Eliassen, was reached."

The amount of the *ad interim* allowances is not one of the issues involved in this appeal, and, therefore, the manner in which the amount of these *ad interim* allowances was reached is immaterial.

Counsel for the Objecting Creditors at the hearing before the Special Master (Transcript of Record, Vol. I, page 318), stated: "The only materiality I feel it has is, it is cross-examination, and has as such a bearing on the weight of the testimony given by Mr. Eliassen and Mr. Lieurance respectively in regard to the value of the services."

A meeting was held at the office of Mr. Kirk, Attorney for the San Francisco Board of Trade, on December 9th, at which meeting were present Mr. Kirk,

Mr. Walton N. Moore, Mr. Lieurance and Mr. Eliassen.

A controversy exists between Mr. Kirk and Mr. Moore on the one hand, and Mr. Lieurance and Mr. Eliassen on the other, as to the understanding reached at this meeting, with regard to the filing of applications for *ad interim* allowances to the Receivers and their Attorney in the western jurisdictions, and as to what transpired at said meeting; the latter contending that it was understood and agreed that they should proceed at once to file Petitions for and obtain *ad interim* allowances in all of the western jurisdictions, and then to report the aggregate thereof to Mr. Walton N. Moore; and further contending that it was agreed that the first of these applications would be made on the following day, that is to say, December 10th, to the United States District Court for the Northern District of California, Southern Division, at San Francisco, and that, having procured the *ad interim* allowances in San Francisco, Mr. Lieurance and Mr. Eliassen should proceed at once to the Northwest and file like applications and procure Orders for *ad interim* allowances in those various jurisdictions, leaving the amounts of these allowances to the judgment of the various Courts; and further contending that Mr. Kirk, the Attorney for the Board of Trade of San Francisco, suggested that it would not be necessary for him to be present upon the hearing of the aforesaid applications for *ad interim* allowances; whereas, it is contended by the former that it was not understood that Mr. Lieurance and Mr. Eliassen should proceed with these applications at that time,

but that they should first confer further with the Creditors' Committee for the purpose of determining what sums should be sought as *ad interim* allowances from the Courts in the western jurisdictions. The testimony of these gentlemen is conflicting concerning what was said and done at that meeting in relation to the obtaining of *ad interim* allowances,—and growing out of this misunderstanding, has come the efforts on the part of the Objecting Creditors to impugn the integrity and good faith of Mr. Lieurance and Mr. Eliassen, and we believe that it is for this purpose only, and not for the purpose of determining the reasonable value of their respective services in this matter, that the letter and telegraphic correspondence have been introduced into this proceeding.

The applications for *ad interim* allowances were made in accordance with what Mr. Lieurance and Mr. Eliassen understood and believed to be the agreement as reached at said meeting in the office of Mr. Kirk, on December 9, 1926. The parties in interest were waiting in the East to know the aggregate of the *ad interim* allowances in the western jurisdictions in order to apprise Judge Hand as to their amount. It was agreed by Mr. Moore, Mr. Kirk, Mr. Lieurance and Mr. Eliassen that these amounts would be left to the judgment of the respective Courts in the western jurisdictions. These amounts could not be determined until the applications were made and hearings had.

There were two letters, however, which were introduced in evidence, but neither of which is set forth in Appellants' Opening Brief. The first of these letters

was from Roberts, Johnson & Rand, of St. Louis, Missouri, dated December 29, 1926, to Mr. A. F. Lieurance, and was introduced in evidence by counsel for the Objecting Creditors, and appears at pages 502 and 503, Vol. II, Transcript of Record. The second of these two letters bears date January 10, 1927, being the reply of Mr. Lieurance to the first of said two letters, and was introduced in evidence by Plaintiffs, and appears at pages 505 to 512, inclusive, Vol. II, Transcript of Record. We respectfully invite the attention of this Honorable Court to both of these letters, and particularly to that of Mr. Lieurance, which we feel is a complete answer to the unfounded charges against Mr. Lieurance and Mr. Eliassen concerning the *ad interim* allowances.

The first of these *ad interim* allowances was applied for and made in the United States District Court in and for the Northern District of California, Southern Division, on December 10, 1926. Mr. Lieurance, in his testimony at page 446, Vol. I, Transcript of Record, describes *generally* what occurred in the various Courts of the four western jurisdictions upon these applications. We quote here from the testimony of Mr. A. F. Lieurance:

> "I accompanied Mr. Eliassen into the various jurisdictions when applications were made for temporary allowances. We went into the courts in the ancillary jurisdictions, to ask for allowances on account to the attorney and the Receivers, and went through with what I suppose is the regular form of proceeding in the matter in court. I was put on the witness-stand by Mr. Eliassen and asked a number of questions, whether I was the Receiver, and if I qualified,

and if the report was true. I suppose that is the natural course of such things. I could not repeat it all, word for word, but that is the nature of it. Included in this was the application to pay a dividend of 40 per cent. The Court asked about what amount of money there was on hand, and whether or not we could safely pay that large a dividend, and asked a number of questions in regard to the condition of the estate, and how the receivership was progressing, and [344] took whatever interest the Court felt was necessary. They asked how much compensation the attorneys and the Receivers were asking for on account. When that question has been asked me I have said, without exception, that that is a matter that is to be left entirely to the discretion of the Court, whatever seems to the Court fair and equitable is all right.";

and

As shown on page 447, Vol. I of the Transcript of Record, he states more specifically what occurred upon the application to the United States District Court in and for the Northern District of California, Southern Division, as follows:

"As I remember it, the Judge asked if an allowance had been made in any other jurisdiction, and Mr. Eliassen replied there had not been, but that an application (being the application of Receiver Gotthold and the attorneys, Messrs. McManus, Ernst & Ernst, referred to in the above mentioned conferences and correspondence) had been made for an allowance on account in New York. He asked what the amount was, and Mr. Eliassen said $10,000. The Court said, 'I will make an order to that effect if that is satisfactory.' Mr. Eliassen said: 'Anything that satisfies the Court.' I was asked how much I was asking for. I said to the Court that this was a matter to be heard in four jurisdictions, that I had

set no figure, and that it was a matter to be left to the Court. He said he understood that. So he said '$10,000 to the receiver.' I asked him what division he would make of that, that I had done all the work in the western jurisdictions, and Mr. Gotthold had done none of it. He said, 'Why not split it 50-50?' I said, 'Do you think that would be fair?' After some hesitation he said, 'No, make it 75 and 25.' That ended the conversation, or, rather, that ended the hearing. I don't think there was anything else after that. The order was made and that was the end of it.";

and

As shown on pages 447 and 448, Vol. I of the Transcript of Record, he states more specifically what occurred upon the application to the United States District Court in and for the Eastern District of Washington, at Spokane, as follows:

"We went to Portland. Judge Bean was not at home; he was away, and would not be back for some three or four days, or whatever time it was. We made an appointment there at that particular time to see him a subsequent date. We proceeded to Spokane. We had a hearing before Judge Webster. Judge Webster asked how much we were asking for [345] after he had approved the payment of the 40 per cent dividend, and I told him that that was a matter that was to be left entirely to the Court. I emphasized that fact. He said he understood that. He commented upon the result of the administration, and said that he was ready to fix the fee, and pressed me for an answer as to how much I would expect. I repeated that that was a matter that was to be left to the Court, whatever to the Court seemed fair and equitable would be satisfactory. He said, 'You must have some idea what the services are worth.' I said to him, 'This is a matter of allowance on account, as I understand it.' He said,

'Well, what would you charge for the services?' I said, 'If I were setting up a fee I would set it at 5 per cent of the gross sales for the services of the receivership.' He asked some questions regarding whether or not it was to be final, or how much more work there would be, and I told him I didn't know, but so far as I knew the next dividend could be paid and the matter closed up. He said he thought that was fair and right, and made the allowance. We proceeded to Seattle, and Judge Neterer——

The MASTER. Q. At Spokane, was anything said about Mr. Eliassen's fee?

A. Mr. Eliassen said to the Court, whatever the Court felt was right and fair would be all right. There was the same procedure that had taken place in San Francisco here. That was followed substantially.";

and

As shown on pages 449 and 450, Vol. II of the Transcript of Record, he states more specifically what occurred upon the application to the United States District Court in and for the Western District of Washington, at Seattle, as follows:

"When I say he was more particular, I mean he took more time and went into the matter more thoroughly. After the regular procedure, just the same as had taken place in the other courts, that is, the presenting of the statement, or the report, he questioned me at some length regarding the result obtained in the receivership. I told him the result that we had obtained. As a matter of fact, he had passed upon the work that had gone on before, and was highly pleased with the result of the sales, and commented upon the manner in which the estate had been handled, and said that it was one of the best that had come to his attention. He asked me how much I was asking for. I told him it was a matter to be left

entirely to the Court. He said he understood that, but I certainly had some idea what the services were worth. I refrained as long as I could, until I was asked the direct question, and felt that I had to answer as to what I would expect for the services. He also delved into the matter as to whether or not the receivership was to be closed up. I told him no, I did not believe so, but that we wanted to pay the 40 per cent dividend, and that there would be another dividend later on, and so far as I knew, the matter could be brought to a close some time, possibly, in April, or maybe earlier. He inquired about the amount of sales in that particular jurisdiction, and I gave it to him, and he took out his pencil and figured out the amount at 5 per cent on the gross sales. As I remember it, it figured up about $13.000. He said, 'I don't think anybody can object to that; however, are you going to make any other application for fees?' I said, 'I don't know, it depends on the amount of work that has to be done in the future.' He said, 'We will make this $12,000, and then if there is any other work done later on we will attend to it when the final account is heard.' So that instead of figuring it at 5 per cent he took off $1,000 and made the fee $12,000.";

and

As shown on pages 450 and 451, Vol. II of the Transcript of Record, he states more specifically what occurred upon the application to the United States District Court in and for the District of Oregon, at Portland, as follows:

"Virtually the same thing prevailed in the court in Portland [347] Oregon, Judge Bean took considerable interest in the affair, and asked a number of questions regarding the estate, and the results obtained. He asked what had been done in the other jurisdictions, and I told him. He

said he thought that was fair and equitable, and he did not believe anybody could object to that, and that he would make the order for 5 per cent on the sales, and make that the final compensation so far as my compensation would be concerned. He figured the 5 per cent on the gross sales. That is how it comes to be an odd figure. That is the way these allowances were obtained. There was no breach of confidence, and no effort made to deceive the Court, and there was nothing done to influence the Court in any manner, except just as I have told you.

That is substantially what has happened in every jurisdiction."

It will be observed that together with these applications for *ad interim* allowances on account of Receivers' fees and Attorneys' fees, applications were also made for orders from the respective Courts directing the payment of preferred claims, and directing the payment of a 40 per cent dividend to the general creditors.

In the Orders made by the various Courts in the western jurisdictions awarding *ad interim* allowances to the Receivers, it was provided in each case, except in the Eastern District of Washington, that a portion of said allowance go to Mr. Gotthold.

An agreement was reached between Mr. Lieurance and Mr. Gotthold that all allowances to the Receivers in the western jurisdictions should belong to Mr. Lieurance, and all of those awarded to the Receiver in the original jurisdiction should belong to Mr. Gotthold. The first knowledge, however, that Mr. Lieurance received from Mr. Gotthold that such a plan was acceptable to Mr. Gotthold reached Mr. Lieurance

while in Portland, Oregon, on December 16th, by wire from Mr. Gotthold from New York, dated December 16th, which was received at Oakland, California, at 9:44 A. M., and was forwarded to Mr. Lieurance at Portland, Oregon, on that date.

Appellants, in their Opening Brief, at the bottom of page 27 thereof, contend that it is a fair legal presumption that Mr. Lieurance received this telegram at Portland sometime before 2:00 o'clock P. M. on December 16, 1926, and prior to the hearing of the application for *ad interim* allowances before the United States District Court of Oregon, which, they say, occurred after 2:00 o'clock P. M. of that day. At the bottom of page 28 of Appellants' Brief, Mr. Lieurance is criticised for not having advised Judge Bean in Portland of the aforesaid Agreement between himself and Mr. Gotthold.

It is unfair to presume that this wire reached Mr. Lieurance even as early as 2:00 o'clock P. M. on December 16th, as his secretary in forwarding the telegram from his Oakland office sent it to his hotel in Portland, where it would have to await delivery to him upon his return to the hotel, in the event that he were not there when the telegram arrived, and there is nothing in the record to show that he was there when it did arrive.

The fact is that the hearing of the applications before the Court in Portland was had at 10:00 o'clock A. M. on the 16th of December, 1926 (Transcript of Record, Vol. I, page 327, testimony of Edward R. Eliassen); also, in the telegram of December 16th,

from Mr. Lieurance to Mr. Moore, page 32 of Appellants' Opening Brief, the following appears: "Work completed here this morning. Etc."

Immediately upon the completion of the applications and the securing of the Orders from all of the western jurisdictions, Mr. Lieurance sent to Mr. Walton N. Moore, at San Francisco, the above mentioned telegram, of date December 16, 1926, wherein he states the amounts allowed to Mr. Eliassen, as follows:

California jurisdiction, at San Francisco	$10,000.00
Washington jurisdiction, at Spokane	2,500.00
Washington jurisdiction, at Seattle	5,000.00
Oregon jurisdiction, at Portland	10,000.00
Total	$27,500.00

and to the Receivers, as follows:

California jurisdiction, at San Francisco (divided 75% and 25%)	$10,000.00
Washington jurisdiction, at Spokane, (division to be made at final hearing)	5,000.00
Washington jurisdiction, at Seattle, (divided $12,000.00 and $1,000.00)	13,000.00
Oregon jurisdiction, at Portland, (divided $13,500.00 and $1,000.00)	14,500.00
Total	$42,500.00

and Mr. Lieurance, from Portland, on the same day, phoned this information to Mr. Love at Seattle, who was a member of the New York Creditors' Commit-

tee. Upon receipt of this telegram by Mr. Moore, there was started a further line of correspondence, both by wire and letter, some of which is set forth in the Opening Brief for Objecting Creditors, and which became, to some extent, quite personal on the part of Mr. Moore and Mr. Kirk. As a part of this Correspondence, there was a letter addressed from Mr. Kirk to Mr. Eliassen, referred to on page 35 of the Opening Brief for Objecting Creditors, to which it is stated on page 36 of said Opening Brief that Mr. Eliassen made no reply. This letter was received at Mr. Eliassen's office during his absence, and his secretary answered it by letter to the Board of Trade, 444 Market Street, San Francisco, California, stating that Mr. Eliassen was expected back shortly at his office, and that all matters would receive his prompt attention. (Transcript of Record, Vol. II, page 493.)

Mr. Eliassen was en route from Portland to Oakland on Saturday, December 18th. (Transcript of Record, Vol. II, page 653.) The next day was Sunday. Upon his arrival at his office he saw Mr. Kirk's letter and thereupon, in response thereto and instead of writing Mr. Kirk, telephoned to Mr. Kirk arranging an interview, which interview was had on Monday, December 20, 1926, at the office of Mr. Kirk, there being present Mr. Eliassen, Mr. Lieurance, Mr. Kirk and Mr. Moore. At this interview the whole subject matter of said *ad interim* allowances and correspondence in relation thereto was discussed.

Thereafter, written Objections and Exceptions were prepared by the Objecting Creditors to the amounts

of these *ad interim* allowances, which said written Objections and Exceptions were not filed at that time, but four certain Stipulations, one to be filed in each of the Courts of the western jurisdictions, were made and entered into by and between A. F. Lieurance and Edward R. Eliassen, and the Creditors' Committee representing the eastern creditors of R. A. Pilcher Co., Inc., by Walton N. Moore, authorized representative, and Creditors' Committee representing western creditors of R. A. Pilcher Co., Inc., by Walton N. Moore, Chairman. All of these Stipulations, constituting Receivers' Exhibit 12, and received in evidence, were the same, except as to the title of the Court and the dates and amounts of the original allowances, and the amounts of the reduced allowances, respectively. A copy of only one of these Stipulations is contained in the Transcript of Record, and appears in Vol. I, page 416, et seq. thereof.

By these Stipulations, each of the original *ad interim* allowances awarded to Mr. Eliassen on account of Attorneys' fees, and each of the original *ad interim* allowances awarded to Mr. Lieurance on account of the Receivers' fees, was reduced by each of the Courts originally fixing the same respectively, and the original Orders were accordingly amended, with the result that the aggregate of the *ad interim* allowances to Mr. Eliassen was reduced to $15,000.00, and the aggregate of the *ad interim* allowances to Mr. Lieurance was likewise reduced to $15,000.00.

In and by said Stipulations, it was further provided that said reduced allowances should not be

further reduced. And in and by said Stipulations it was further provided that these respective Courts should have the exclusive right to fix the fees and compensation of the Receiver, A. F. Lieurance, and the fees and compensation of Edward R. Eliassen, Attorney for the Receivers in the above entitled proceedings, whether or not any further proceedings were taken in bankruptcy proceedings then pending, or in any other bankruptcy proceedings that might be instituted thereafter. And by said Stipulations it was further provided that the final fixation of the fees of A. F. Lieurance, as Receiver, and of Edward R. Eliassen, as Attorney for the Receivers in this matter, should be made by the said Courts respectively at the time of the hearing on the final account of the Receivers herein, and that notice of the time and place of such hearing should be given to all of the known creditors of the Defendant company by mailing notices to them at their last known addresses at least thirty (30) days before such hearing, and that no other or further fixation of their respective fees should be made by said Court in the meantime. By said Stipulations, it was further provided that these Stipulations should not be construed to be any limitation whatever upon the right of Receiver Lieurance, or of his said Attorney, Edward R. Eliassen, at the time of such final fixation of fees, to apply for or receive additional fees or compensation for services, either theretofore or thereafter rendered by them, or either of them; or upon the right of any creditor or creditors to oppose or contest any such application or applications if and when so made.

When the foregoing Stipulations were made and entered into, and the orders of the various Courts amending the original Orders of *ad interim* allowances were made and entered, the above mentioned conferences and letter and telegraphic communications were rendered immaterial so far as the question of the reasonable value of the services rendered by Mr. Lieurance, as Receiver, and by Mr. Eliassen, as Attorney for the receivers, in this matter are concerned.

The Receivers had filed in each of the four western jurisdictions their final account covering the entire receivership, together with their final report accompanying said account, and together with the application of Receiver Lieurance for additional compensation to himself and for additional compensation for Mr. Eliassen, his Attorney, and due notice thereof was given to all of the creditors in pursuance of said Stipulations. The Objecting Creditors also filed their Objections and Exceptions to each of the said final accounts of the Receivers, and the application for additional compensation to Receiver A. F. Lieurance and to Mr. Eliassen, Attorney for the Receivers, in each of the aforesaid four western jurisdictions.

Stipulations were made and entered into by the parties in interest in each of the western jurisdictions, by which it was agreed that all of these matters should be heard and determined together in the United States District Court in and for the Northern District of California, and Orders were made in said Courts respectively to this effect. (See pages 164 to 168, inclusive, Transcript of Record, Vol. I.)

On September 20, 1927, an Order of Reference to Master was made in the United States District Court in and for the Northern District of California, Southern Division, referring said matters to Honorable Harry M. Wright, Esq., as Special Master, to take the testimony and report his findings and conclusions thereon to the Court, and further ordering that said matters be set for hearing before said Special Master on October 11, 1927, subject to the convenience of said Special Master.

HEARING BEFORE SPECIAL MASTER.

The hearing was accordingly set for October 11, 1927, and was commenced on that day, and was further heard on October 19, 1927, October 20, 1927, and October 21, 1927, whereupon at the request of Mr. Heney the matter was submitted on briefs, the final brief of Objecting Creditors being filed on January 3, 1928.

At the outset of the hearing it was stipulated and agreed that the Special Master should also return the evidence taken. Mr. Joseph Kirk, attorney for the San Francisco Board of Trade, and one of the attorneys of record for objecting creditors, was seriously ill during the hearing and his testimony on certain issues was stipulated into the record.

That a full and complete hearing was had before the Special Master upon all of the objections and exceptions urged by the Objecting Creditors against the final Account and Report of the Receivers, and

against the Application of Mr. Lieurance for further allowances to him on account of his fees for services, and his Application for further allowances to Mr. Eliassen for his fee as attorney for the Receivers, and against the payments made to Mr. Hershey, is evidenced by the Transcript of the Record filed herein.

From the report of the Special Master it clearly appears that all of the testimony produced before him was thoroughly analyzed and considered before making his report, which appears upon pages 169 to 209, inclusive, Vol. I of the Transcript of Record.

Full, complete and detailed statements in writing of the services rendered by Mr. Lieurance as Receiver, by Mr. Eliassen as attorney for the Receivers in the western jurisdictions, and by Mr. Hershey as accountant for the Receivers in the western jurisdictions were presented in evidence before the Special Master, which statements were supplementd by the oral testimony of these three gentlemen. No claim is made by the Objecting Creditors that the services of these three gentlemen as stated in their written statements and in their testimony respectively were not rendered by them.

Experts were called by both sides concerning the value of all of the services rendered by Mr. Eliassen as attorney for the Receivers in the western jurisdictions. Experts were called to testify as to the value of all of the services rendered by Mr. Hershey as accountant for the Receivers in all the western jurisdictions. No experts were called to testify to the

value of the services of Mr. Lieurance rendered by him in connection with this receivership.

It will be noted that Mr. Eliassen, in connection with his services rendered to the Receivers, employed other counsel to assist him whose fees amount to $2,650.00, all of which Mr. Eliassen is called upon personally to pay.

The Special Master, in his Report, found the reasonable value of all of the services so rendered by Mr. Eliassen to be the sum of $30,000.00, or $15,000.00 in addition to the $15,000.00 already received by him; he further found the reasonable value of all the services of Mr. Lieurance, as Receiver, to be the sum of $35,000.00, or $20,000.00 in addition to the $15,000.00 already received by him, and he further found the sum of $10,750.00 to be the reasonable value of all the services rendered by Mr. Philip A. Hershey, and made the following recommendations in his report:

> "(1) The final and supplemental reports and accounts of the Receiver should be approved as rendered.
>
> (2) The Receiver should be directed to pay out of funds in his hands:
>
> (a) To Philip A. Hershey, his accountant, $769.71, in full of all demands.
>
> (b) To Edward R. Eliassen the sun of $15,000.00 in full of all services as attorney for the Receiver.
>
> (c) To A. F. Lieurance, in full of all services as Receiver, the sum of $20,000.00.
>
> (d) To the Special Master herein such reasonable compensation as to this Court shall

seem proper for his services herein, not exceeding $1,500.00.

(3) The Receiver shall submit to the Court a final supplemental account of his receipts and disbursements, and pay any balance in his hands and transfer any property other than money in his hands belonging to the receivership as the Court may direct; and thereafter be discharged."

Objections and Exceptions to the Master's Report were filed by the Contesting Creditors, and, after a hearing thereon in the United States District Court in and for the Northern District of California, Southern Division, at which hearing Mr. Francis J. Heney, Mr. Grant H. Wren and Mr. C. A. Shuey, attorneys representing the Objectors, and Messrs. Edward R. Eliassen and Peter J. Crosby, Attorneys representing Receiver Lieurance, were present, the said Court rendered its Judgment and Decree, wherein it overruled the Objections and Exceptions to the said Report and Findings of the Special Master, and wherein it approved, ratified and confirmed the Report and Findings of the Special Master, and wherein it further ordered, adjudged and decreed as follows:

"(1) That the final accounts and reports of the Receivers be, and they are, hereby approved, ratified and confirmed as rendered.

(2) That the supplemental account and report filed herein on behalf of the Receivers be, and it is, hereby approved, ratified and confirmed.

(3) That the sum of Thirty Thousand Dollars ($30,000) be, and it is, hereby fixed as the compensation to be paid to Edward R. Eliassen, attorney for the Receivers, in full for his services

rendered in the above-entitled matter in the above-entitled Court and in the jurisdictions of Oregon and Washington hereinabove mentioned; that the said Edward R. Eliassen has already received Fifteen Thousand Dollars ($15,000) on account of such services and that the Receiver A. F. Lieurance be, and he is, hereby authorized and directed to forthwith pay to the said Edward R. Eliassen the balance of Fifteen Thousand Dollars ($15,000) in full for all services rendered as attorney for the Receivers.

(4) That the sum of Thirty-five Thousand Dollars ($35,000) be, and it is, hereby fixed as the compensation of A. F. Lieurance, as Receiver in the above-entitled proceeding in the above-entitled Court and in the Courts in the aforesaid jurisdictions of the States of Oregon and Washington; that he has already been paid Fifteen Thousand Dollars ($15,000) on account and that he is hereby authorized and directed to pay to himself forthwith the balance of Twenty Thousand Dollars ($20,000) in full for all services rendered by him as receiver in the premises.

(5) That Philip A. Hershey, accountant for the Receivers, be paid the further sum of Seven Hundred and Sixty-nine and 71/100 Dollars ($769.71) in full for his services, and the said Receiver A. F. Lieurance is hereby ordered and directed to pay said sum forthwith to the said Philip A. Hershey in the premises.

(6) That the said Receiver A. F. Lieurance submit to the above-entitled Court a final supplemental account of his receipts and disbursements and pay any balance in his hands, together with the sum of Seventeen Hundred Dollars ($1,700) (which said Receiver and his attorney are informed is the apparent deficit for expenses of administration incurred at New York and which said sum they have agreed to pay out of their allowances) to Receiver Arthur F. Gott-

hold, at New York, and immediately thereafter be discharged.

Dated, this 27th day of March, 1928."

At the last mentioned hearing, the Affidavit of Mr. Grant H. Wren, set forth on pages 43 and 44 of Appellants' Opening Brief, was filed and received in evidence. This Affidavit refers to certain disputed claims then pending in the United States District Court in the original jurisdiction, and also to certain expenses for Mr. Cardozo, as Master, and balances alleged to be due to Mr. Gotthold for moneys which he had personally expended. In this Affidavit are set forth excerpts from a telegram to Affiant from Messrs. McManus, Ernst & Ernst, bearing date the 27th day of January, 1928, and from a letter of date about the 8th day of February, 1928, from Messrs. McManus, Ernst & Ernst to Mr. William Fraser, chairman of the Eastern Creditors' Committee, and which communications referred to the claims and expenses above mentioned.

In these communications so referred to in said Affidavit, it is urged that moneys be reserved in the western jurisdictions for the purpose of meeting these claims and expenses. Upon said last mentioned hearing, the matter of these expenses and disputed claims was considered, and the attention of the trial Court was called to a telegram of Mr. Gotthold to Mr. Lieurance, under date of March 2, 1928, from which telegram it appeared that approximately $2,800.00 would be required to meet the above mentioned expenses in the New York jurisdiction. It

was also shown to the trial Court that after the payment of the allowances recommended by the Special Master, and the payment of the miscellaneous expenses, there would be in the hands of the Receivers in the western jurisdictions $1,124.18, thus leaving an apparent deficit of about $1,700.00 to meet the expenses in the eastern jurisdiction. Thereupon, Mr. Eliassen and Mr. Lieurance agreed to contribute the sum of $1,700.00 for the purpose of meeting said apparent deficit, and thereupon an Order was made in the premises, based upon such offer to contribute, and thereafter said contribution was made as is shown by the supplemental and final account of the receivers, at pages 232 to 235, inclusive, Vol. I, Transcript of Record.

DISPUTED CLAIMS PENDING BEFORE SPECIAL MASTER IN NEW YORK.

At the time of the hearing of the Objections and Exceptions of the Objecting Creditors to the report of Honorable H. M. Wright, Special Master above referred to, a report had not yet been made by Honorable Michael J. Cardozo, Jr., Special Master in New York, before whom these disputed claims were pending.

In the interest of justice, we deem it proper to apprise this Honorable Court of subsequent proceedings in this matter in the United States District Court, Southern District of New York, in which an Order was made by Honorable Augustus N. Hand, dated December 10, 1928, the effect of which, we be-

lieve, completely eliminates the question raised by the Objecting Creditors in their Brief, at page 46 thereof, wherein they say "No provision has been made for the payment of the additional $10,000.00 of creditors' claims which are in litigation." A copy of said Order came to the hands of A. F. Lieurance from Messrs. McManus, Ernst & Ernst, Attorneys for the Receivers in the eastern jurisdiction, of which said order the following is a copy:

"United States District Court
Southern District of New York

Sidney Gilson, Herman Avrutine and Samuel Avrutine, co-partners engaged in business as National Garment Co., Complainants, -against- R. A. Pilcher Co., Inc., Defendant.	In Equity No. 37/146

The Receivers herein having filed their final account, and reports having heretofore been filed on behalf of the Receivers, and it appearing that an order has heretofore been entered on March 27, 1928, approving and ratifying the final accounts and reports of the receivers in all ancillary proceedings, and it further appearing that insufficient moneys have been received by the Receivers in this proceeding to meet all of the obligations incurred or undertaken by the Receivers, and that an agreement has been made to reduce the amount to be paid to URIE F. MANDLE, one of the claimants, and it further appearing that MICHAEL H. CARDOZO, JR., the Special Master heretofore appointed herein, has reported to this

Court his findings and such findings have been confirmed excepting only the claim of URIE F. MANDLE, above referred to, and it appearing that consent to the entry of this order has been given on behalf of the claimant URIE F. MANDLE,

NOW, THEREFORE, after hearing MCMANUS, ERNST & ERNST, ESQS., by WALTER E. ERNST of counsel, on behalf of the Receivers, it is hereby

ORDERED AND DECREED that the final accounts of the Receivers be and they hereby are approved, ratified and confirmed as rendered; and it is further

ORDERED AND DECREED that the said ARTHUR F. GOTTHOLD and A. F. LIEURANCE as Receivers herein, on making the payments hereinafter set forth, be and they hereby are discharged as such Receivers and their bond or bonds heretofore given are cancelled and discharged; and it is further

ORDERED AND DECREED that out of the funds now in his possession, as set forth in the annexed account, ARTHUR F. GOTTHOLD, as Receiver, shall make the following payments: to MICHAEL H. CARDOZO, JR., for his services as Special Master, the sum of One thousand Dollars ($1,000); to ROBERT F. STEPHENSON, as Referee, the sum of One hundred eighty-four and 75/100 Dollars ($184.75); and that the balance in his possession, as set forth in the annexed account, to-wit: Four hundred ninety-nine and 76/100 dollars ($499.76) be paid to URIE F. MANDLE, or his attorneys, in full and complete settlement of the claim of the said URIE F. MANDLE against the defendant above named.

Dated, New York, N. Y., December 10, 1928.

Augustus N. Hand,
United States Circuit Judge."

We deem it further proper to apprise this Honorable Court of the fact that on November 21, 1929, Attorney Edward R. Eliassen received from Arthur

F. Gotthold, one of the Receivers in this matter, the following telegram:

"Edward R. Eliassen,
1203 Central Bank Bldg.,
Oakland, Calif.

ALL CLAIMS HEARD BEFORE CARDOZO HAVE BEEN DISPOSED OF STOP MONEYS DIRECTED TO BE PAID BY ORDER JUDGE HAND DECEMBER TENTH HAVE BEEN PAID STOP THAT ORDER FINALLY DISCHARGED EQUITY RECEIVERS UPON MAKING PAYMENTS.

ARTHUR F. GOTTHOLD."

On page 42 of their Opening Brief, the objecting creditors refer to the Final Account of Receiver Lieurance, and the balance on hand as shown by said Final Account, amounting to $41,975.28.

A supplemental account, however, was filed at the time of the hearing before the Master (Master's Report, Vol. I, page 170, Transcript of Record), and, by stipulation of the parties, was considered by the Master at said hearing and in his Report, and which supplemental account was confirmed and approved by the trial Court at the hearing of the Objections and Exceptions to the Report. (See page 230, Vol. I, Transcript of Record.) This supplemental account and report are not set forth in full in the transcript, but, by stipulation, and upon an Order granted thereon, the original of said supplemental account and report, designated as Document No. 67 in the files of the Clerk of the said United States District Court, together with other documents, were transmitted to the Clerk of the United States Circuit Court of Appeals for use upon this appeal, as is indicated on page 805, Vol. II, Transcript of Record.

By this supplemental account there was shown to be a balance on hand of $38,694.86.

After the payment of the aforesaid additional allowances to Mr. Lieurance, Mr. Eliassen and Mr. Hershey, and the payment of certain expenses of the Receivership, there was finally left in the hands of the Receivers in the western jurisdictions the sum of $2,760.85, which included the $1,700.00 contributed by Mr. Lieurance and Mr. Eliassen, and which said sum of $2,760.85 was forwarded to Arthur F. Gotthold, co-Receiver at New York, on or about the 30th day of March, 1928.

In the Opening Brief of Objecting Creditors at page 45, computations appear showing the aggregate sums allotted in both jurisdictions to attorneys and receivers, the aggregate total thereof amounting to $95,000.00, and the statement is made that this amount was "one-fifth of the total net amount obtained by the Receivers from the sale of assets which were thus made available for payment of dividends to creditors, receivers' and attorneys' fees, and expenses of administration."

They fail to state, however, that the gross amount of cash received by the Receivers and handled by Receiver A. F. Lieurance was approximately $900,000.00.

ARGUMENT.

The questions involved upon this appeal are:

FIRST—Did the trial Court err in any of the particulars set forth by the Appellants in their

ASSIGNMENT OF ERRORS, appearing in Transcript of Record, Vol. II, pages 808 to 811, inclusive?

SECOND—Was there any manifest abuse of discretion on the part of the trial court in the exercise of its discretion in fixing the sum of $30,000.00 as the reasonable value of all of the services of Edward R. Eliassen as attorney for the Receivers?

THIRD—Was there any manifest abuse of discretion on the part of the trial court in the exercise of its discretion in fixing the sum of $35,000.00 as the reasonable value of all of the services of A. F. Lieurance, Receiver?

EMPLOYMENT OF PHILIP A. HERSHEY AS ACCOUNTANT FOR THE RECEIVERS, THE SERVICES RENDERED BY HIM AND THE VALUE THEREOF.

At this point we respectfully invite the attention of this Honorable Court to the Order in ancillary proceedings appointing Receivers, etc., and to that portion of said Order appearing in Vol. I of the Transcript of Record, page 32, which says:

> "That said Receivers are authorized to do all and any things and enter into all or any agreements as may be deemed by them necessary or advisable to preserve and protect the said property or assets; in their discretion to employ and discharge and to fix the compensation of such officers, agents and employees as may, in their judgment, be necessary or advisable in the administration of this estate; to employ accountants and counsel, and to make such payments and disbursements as may be needful or proper in the preservation of the assets of the defendant."

An order Continuing Receivers and Making Them Permanent with all powers and duties mentioned and set forth in the order of their appointment as temporary receivers appears in Vol. I, Transcript of Record, pages 36 to 39, inclusive, and in said last mentioned Order the employment by the Receivers of Philip A. Hershey & Co. as accountants, and of Edward R. Eliassen as attorney for the Receivers are confirmed and approved.

We deem it unnecessary to relate here in detail the services rendered by Mr. Hershey as accountant for the Receivers in this matter, inasmuch as his statement in detail of his said services is on file and in evidence and appears in Vol. II, Transcript of Record, at pages 785 to 798, inclusive, as Plaintiff's Exhibit No. 4. The Objecting Creditors do not deny the rendition of any of these services. This written statement of services was before the Special Master, who found the reasonable value thereof to be $10,000.00.

Mr. Willis Lilly, connected with the firm of McLaren, Goode and Co., certified public accountants, testified that the value of Mr. Hershey's services was $11,250.00, figured on a basis of 2624 hours, counting seven hours to a day. Mr. Andrew F. Sherman, a certified public accountant, called as an expert to testify to the value of Mr. Hershey's services, fixed such value at $15,000.00. Mr. Hershey, himself, testified to the value of his services and fixed the value of the same at from $4.00 to $10.00 per hour for approximately 2600 hours, which, taken at $4.00 an hour, would amount to $10,400.00. Mr. Lieurance testified

that he not only gave personal consideration to the value of Mr. Hershey's services, but likewise made inquiry of Mr. Willis Lilly, of the firm of McLaren, Goode and Co., before making final payment to Mr. Hershey.

No contrary evidence was offered by the Objecting Creditors as to the value of these services. There is no evidence in the record of this case showing either that the services alleged by Mr. Hershey and Mr. Lieurance to have been performed by Mr. Hershey were not performed, or that any thereof were unnecessary, or that said services, or any thereof, were inefficiently performed, or that the value of said services is less than $10,000.00.

It is contended by the Objecting Creditors that Mr. Hershey was employed at an agreed salary of $300.00 per month. The only evidence in the record to this effect is that of Mr. Ernst, whose deposition was taken in New York and who, among other things and in this respect, said, "At that time (meaning the time of the conference at Oakland, California, July 1, 1926), Mr. Lieurance told me that Mr. Hershey was receiving a salary of $300.00 per month."

We respectfully submit, however, that Mr. Hershey was not employed on a salary basis of $300.00 per month or any other fixed sum, and further that Mr. Lieurance did not tell Mr. Ernst that Mr. Hershey was receiving a salary of $300.00 per month or that he was employed on a salary basis.

Concerning this matter we quote from the testimony of Mr. Lieurance:

"At that first talk, nothing was said by either myself or Mr. Hershey about the amount of his compensation, because we knew nothing about the extent of the work that would be done, or the receivership; and it was some day or two after the first talk before there was anything said about a fee, and then the talk, in substance, was that we did not know what the value of the service or the amount of the work would be, and there was no value that [205] could be fixed on the services; and Mr. Hershey said he would have to have a drawing account because he had office expenses, and had his help to pay, and so on. * * * The amount that his drawing account should be was not discussed at that time. * * * No one knew what the extent of the work would be. * * *"

(Vol. I, Transcript of Record, page 245.)

"After that we did discuss the amount to be paid. That was probably three, or four, or five days, probably five days after we learned something about the receivership.

"The talk on that occasion was not definite; the amount was not definitely fixed then, but he would have to have a drawing account; there was no way to fix the amount. * * * He would do the work, and whatever was right and fair would be agreeable; that was substantially the talk at that time."

(Vol. I, Transcript of Record, page 246.)

"I let Mr. Hershey go ahead with his work, with no understanding between us as to what his compensation would be, until Mr. Walter Ernst came out from New York, and Mr. Ernst asked me how much I would have to pay Mr. Hershey, and I told him I did not know; and then I had a talk with Mr. Hershey about how much he would have to have on account, and he told me he would have to have from $250 to $300 a month, and that month we paid him $250 and he said that was not sufficient to take care of his bills, etc.,

and I paid him $300 a month, and also paid him $50 back pay for the first month.

"Mr. Ernst arrived here about June 30. The $250 paid to Mr. Hershey was not for the month of May. I don't remember when the payment was made but it was made some time afterwards. I could not tell you, without looking it up, whether it was after I had the talk with Mr. Ernst; it will show on the record. After I had this talk with Mr. Hershey, in which he said he would have to have $300 a month, Mr. Ernst asked me about it and I told him Mr. Hershey would have to have a drawing account of $300 a month. There was no further talk between myself and Mr. Ernst about it; he said that was fair enough or something to that effect and the subject was dropped then."

(Vol. I, Transcript of Record, page 247.)

In addition to the testimony and as physical evidence of the labor performed by Mr. Hershey in this receivership there were before the Special Master the records, documents, vouchers, books and accounts, and miscellaneous memoranda prepared and kept by him as the accountant for the Receivers. Thus the Special Master was able to obtain an intimate and complete knowledge of the services rendered by Mr. Hershey, as said accountant, and which the Special Master described in his report (Vol. I, Transcript of Record, page 197) as "laborious services efficiently performed." In fact counsel for the Objecting Creditors stated before the Special Master that the receivership was *very efficiently* conducted.

Mr. Gotthold, in his letter to Mr. Lieurance (Objecting Creditors Opening Brief, page 37) speaks of "the splendid work you have done in disposing of

the stores," and Mr. Walton N. Moore, in his letter of December 10th, 1926, to William N. Frazer (Objecting Creditors Opening Brief, page 18) says "*nearly all* of the *work* has been done *out here* where the property was located and the *results produced* by Lieurance have been *very creditable*."

The sum of $10,000.00 paid to Mr. Hershey was for services rendered to about April 30, 1927, the additional $750.00 was for services rendered between that date and the date of the hearing of Objections and Exceptions before the Special Master in October, 1927, and the sum of $19.18 was allowed to Mr. Hershey for moneys by him expended.

We respectfully contend that the aforesaid services of Mr. Hershey contributed to and helped to make possible the very creditable showing of Mr. Lieurance in the conduct of this receivership, and that Mr. Lieurance was fully justified in the employment of Mr. Hershey, as such accountant, and in the payments he made to Mr. Hershey for all of these services.

We therefore respectfully submit that the trial Court did not err in approving and confirming the report of the Special Master in relation to his findings as to the value of Mr. Hershey's services, nor did it err in ordering and directing the further payment of $769.18 to Mr. Hershey, which payment was recommended by the Special Master after hearing the evidence in relation thereto.

EMPLOYMENT OF EDWARD R. ELIASSEN, AS ATTORNEY FOR THE RECEIVERS, THE SERVICES RENDERED BY MR. ELIASSEN, AND THE VALUE THEREOF.

The record in this case shows that Mr. Walton N. Moore suggested to Mr. A. F. Lieurance that this Receivership be handled through the San Francisco Board of Trade, and that Mr. Lieurance employ the Attorneys of the San Francisco Board of Trade to act as the Attorneys for the Receivers in the western jurisdictions. This suggestion was taken under advisement by Mr. Lieurance, and thereafter by him refused, and he thereupon employed Mr. Edward R. Eliassen to act as the Attorney for the Receivers in the western jurisdictions. Mr. Eliassen immediately entered upon the performance of his services as such Attorney, and continued to serve as such throughout the Receivership.

A complete detailed written statement of the services rendered by Mr. Eliassen in this Receivership was filed and received in evidence before the Special Master, and appears in Vol. II, Transcript of Record, at pages 554 to 735 inclusive, and is designated "Receivers' Exhibit No. 3." As shown by this Statement of Services, Mr. Eliassen, as Attorney for the Receivers in the western jurisdictions, was required to be away from his office, and entirely out of the State of California, for approximately seventy-six (76) days. From the oral testimony of Mr. Eliassen before the Special Master, it is shown that there was hardly a day from the 4th day of June, 1926, to the 1st day of September, 1927, that he did not perform some professional service in connection with the business of the Receivership.

For detailed information as to the professional services rendered by Mr. Eliassen, we respectfully invite the attention of this Honorable Court to said "Receivers' Exhibit No. 3."

There is no denial in the record of the services rendered by Mr. Eliassen, as Attorney for the Receivers in this matter, but, in the Opening Brief for Objecting Creditors, they seek to minimize the value of the services so rendered by him, and even suggest that the legal assistance and guidance rendered by him to the Receivers could have been more efficiently performed by the Attorneys for the San Francisco Board of Trade. There is not a single word in the record in this case to show that the Attorneys for the San Francisco Board of Trade could have performed the legal work connected with this Receivership in any particular more efficiently, more conscientiously, more economically, or with greater dispatch than it was performed by Mr. Eliassen.

The Objecting Creditors, in their Opening Brief, page 57, in a further attempt to minimize the value of the services rendered in this Receivership by Mr. Eliassen, state:

> "It is undoubtedly true that Mr. Eliassen devoted a very substantial amount of his time to these receivership matters *during the first two months of his employment.*"

To this contention, no better answer suggests itself to us than to quote from the Report of the Special Master as the same appears in Transcript of Record, Vol. I, page 201:

> "The answer to this suggestion (the suggestion of Mr. Heney that a fee of $100.00 per day for a period of five months would amount to $15,000.00) is that a period of five months does not by any means represent the period of service, which continued until the filing of the final report in May, 1927, to take no account of the time occupied in preparing for this hearing. The stores were sold at the close of the five months' period, but after that the claims were determined and a great deal of necessary work done."

These findings by the Special Master are fully supported by Mr. Eliassen's above mentioned written Statement of Services, which sets forth in detail what services he performed subsequent to the selling of the stores, the last of which was sold on November 3, 1926, and these services so performed are set forth commencing on page 636, Vol. II, Transcript of Record, to and including page 735 of the same volume.

It is not true that this was Mr. Eliassen's first experience as Attorney for a Receiver, as stated in said Opening Brief. Mr. Eliassen had been practising law for approximately thirty years, and he testified in this case that he had acted as Attorney for Receivers in bankruptcy matters. However, there is no evidence in this record to the effect that the said services of Mr. Eliassen were not efficiently performed.

It is a matter of common knowledge that a Receiver in such a case as this requires the assistance and guidance of a competent lawyer, and, of necessity, constantly turns to him for aid. When the Attorney for the Objecting Creditors stated before the Special Master that the Receivership was very efficiently conducted, he, of course, fully realized that

this included the work of Mr. Eliassen; when Mr. Gotthold, in his letter to Mr. Lieurance, spoke of "the splendid work in disposing of the stores," he, too, being an Attorney, realized the importance of the services of the Attorney for the Receivers in connection therewith, and, when Mr. Walton N. Moore stated in his letter to Mr. Fraser that "the results produced by Mr. Lieurance had been very creditable," he, likewise, knew that the services of the Attorney for the Receivers contributed in no small degree to these "creditable results."

A letter, bearing date August 9, 1927, addressed To the Honorable, the Judge of the District Court of the United States, San Francisco, California, by Weber Showcase & Fixture Company, one of the largest creditors (its claim being in the neighborhood of $35,000.00), is set forth in Vol. I, Transcript of Record, at pages 419 and 420, and was offered in evidence by Plaintiffs, wherein they say:

> "It has come to our attention that Mr. A. F. Lieurance and his Attorney, Mr. Eliassen, have met with certain opposition in the matter of the settlement of the financial accounts of the Receivers in the Pilcher matter.
>
> "Our claim was probably one of the largest in this matter (being over $35,000) and we, therefore, know that this receivership possessed many complications and was very difficult to handle. These men have done a splendid piece of work, and we feel that their efforts should be recognized to the extent that nothing is done to hinder the winding up of this matter.
>
> "We want to go on record as not raising any objections to the fees being paid according to the Court's Order."

Another letter, bearing date July 27, 1927, addressed to Mr. William Fraser (who was Chairman of the New York Creditors' Committee), by A. V. Love Dry Goods Company, another one of the creditors in this matter, is set forth in Transcript of Record, Vol. I, pages 420, 421 and 422, wherein the writer, Mr. A. V. Love, who was a member of the New York Creditors' Committee, states, among other things:

> "I am strongly of the opinion that these men have done a splendid piece of work, as I have written you before.
> * * * * * * *
>
> "I want you to know that the A. V. Love Dry Goods Company, or the writer, has not been or is not a party to any objections that have been raised to these fees being paid according to the Court's order, and as you know we are one of the heaviest creditors.
> * * * * * * *
>
> "You must know that the assets of this company were on the Pacific Coast and that the work was actually done out here and that any compensation that should be rendered should be to those who did the work, and that was on the Pacific Coast by Mr. Lieurance and his attorney.
>
> "Therefore, I sincerely hope that you will use your influence to have this unfair opposition towards Mr. Lieurance and Mr. Eliassen withdrawn."

Still another letter, dated "Portland, Oregon, September 6, 1927," addressed to A. F. Lieurance, Receiver R. A. Pilcher Co., Central Bank Building, Oakland, California, by Journal Publishing Co., another of the creditors in this matter, is set forth in Vol. I, Transcript of Record, pages 422 and 423, wherein the following appears:

"Our attention has been called to the fact that a remonstrance has been filed against the allowance of the fees for the attorney and receiver in the above matter.

"The Journal, as a creditor of the estate, is well pleased with the manner in which its business has been handled and the dividend that we have received is unusually large under the circumstances.

"We take this opportunity to assure you that we have no objection to any fees for both the receiver and the attorney that the court has or may allow in this matter. We feel perfectly satisfied that the court will treat both the receiver and his attorney and the creditors justly and fairly."

Another letter, bearing date "Portland, Oregon, September 7, 1927," addressed to Mr. A. F. Lieurance, Receiver of R. A. Pilcher Co., Central Bank Building, Oakland, California, by Lowengart & Company, another one of the creditors in this matter, is set forth in Vol. I, Transcript of Record, pages 423 and 424, and which recites:

"We have just heard that certain creditors of the Pilcher Company have objected to fees that have been allowed by the Judges of the United States Court to you and your Attorney for services rendered.

"We, as creditors of the Pilcher Company, have been well satisfied with the work that you and your attorney have done. The results you have obtained have been satisfactory to us. We are perfectly willing and satisfied that the Court, which has knowledge of all of the work that has been performed, fix a fee that it thinks fair and reasonable for you and your attorney.

"There will be no objection on our part to this procedure which we think is fit and proper."

A number of the leading attorneys of the San Francisco Bar eminently qualified to testify regarding the value of the services rendered by Mr. Eliassen were called by the Plaintiff and gave their testimony before the Special Master.

Mr. Eliassen's written statement of his services had been submitted to them for examination, and, when asked upon the witness stand as to their opinion of the value of these services, they testified as follows: Mr. Charles H. Sooey testified that the reasonable value of the services of Mr. Eliassen is $42,620.00; Mr. C. M. Bradley testified that the reasonable value of Mr. Eliassen's services is from $25,000.00 to $30,000.00; and Mr. John L. McNab testified that the reasonable value of Mr. Eliassen's services is $36,000.00.

Other prominent attorneys were called by the Objecting Creditors to testify as to the value of the services of Mr. Eliassen, to-wit: Mr. William J. Hayes, who for a number of years occupied the position of Referee in Bankruptcy in the Federal Court, gave, as his opinion, that the value of the services rendered by Mr. Eliassen was $25,000.00; Mr. A. B. Kreft, who, at the time of giving his testimony, held the official position of Referee in Bankruptcy in San Francisco, gave as his opinion that from $20,000.00 to $25,000.00 would be fair and reasonable compensation for the services performed by Mr. Eliassen; Mr. Milton Newmark stated that in his opinion $20,000.00 would be a fair and reasonable compensation for the services performed by Mr. Eliassen in this matter.

Mr. Eliassen places the reasonable value of his services at $30,000.00.

Out of the fees allowed to Mr. Eliassen for his services in this matter, he has been required to pay for the services of attorneys employed to assist him in the northern jurisdictions the sum of $2,650.00, leaving for himself the sum of $27,350.00, out of which he has also voluntarily contributed his proportion of the $1,700.00 jointly contributed by him and Mr. Lieurance, and which was sent with other moneys to Mr. Lieurance's co-Receiver, Mr. Gotthold, in New York City. (Transcript of Record, Vol. I, page 233.)

We have examined the authorities cited in the Opening Brief for Objecting Creditors, and have noted the excerpts from these decisions as set forth in said Opening Brief. We respectfully submit that in none of these cases is there established any rule or formula that might be serviceable in any general way as a method of computing the amount to be allowed in the case at bar.

In passing, we beg leave to invite the attention of this Honorable Court to the quotation from the case of *Wilkinson v. Washington Trust Co.*, 102 Fed. 28, cited by Objecting Creditors at pages 59 and 60 of their Brief. Upon comparing this quotation with the original in said report, we find the same to be incorrect in this, that it omits language used by the Court indicating that the Reports of the Receivership there in question involved nothing more than a *simple narrative of his acts,* and an account of his Receipts

and Disbursements. (Italics ours.) This omission was, without doubt, unintentional.

Again comparing the quotation appearing on pages 51 and 52 of Opening Brief for Objecting Creditors, we find no portion of the original decision in any manner stressed by the use of capital letters or by italics. But, no doubt, the writer of the Opening Brief unintentionally omitted to state that these capitals and italics were his.

There is other language of the Court in this last named case however which we deem proper to call to the attention of this Honorable Court. It appears at page 31, Vol. 102, Federal, as follows:

> "We are of the opinion that the action of the circuit court in the premises was just and right, and, even if the issue were doubtful, we should not disturb or reverse its action unless the record disclosed a clear mistake of fact, or a plain error of law. A court of equity has the power to fix the compensation of the receiver it appoints. He is its creature,—one of the means by which it exercises its power. In the administration of a trust by a court through its receiver, the chancellor, who appoints, supervises and directs his action, necessarily knows, better than any record can teach an appellate court, what his appointee has done, and what is a just and reasonable compensation for his services. His allowances of this character ought to be, and are, largely discretionary with the chancellor, *and they should not be disturbed* unless there has been a *manifest disregard of right and reason.*" (Italics ours.)

It is respectfully submitted that after Mr. Eliassen was appointed by the Receivers as their Attorney in the western jurisdictions, his appointment as such

Attorney was approved by the Court appointing them in the western jurisdictions. As such Attorney, he assisted in the administration of the trust by all four Court in the western jurisdictions, and these Courts necessarily knew what he had done as Attorney for the Receivers, and what would be a just and reasonable compensation for these services; any amount, therefore, fixed and allowed by the trial Court as the reasonable value of such services, should not be disturbed unless there has been a manifest disregard of right and reason on the part of the trial Court in so doing.

In *Tardy's Smith on Receivers,* Vol. II, page 1723, it is stated:

> "In some instances, there is a statute to the effect that the compensation shall be such reasonable sum as the nature of the case justifies. It is evident that such a statute is not of much aid to a court, and is nothing more than a codification of what any court would say without reference to any statute. When thus left to their own resources in the matter, courts have found it impossible to establish any rule or formula that might be serviceable, in any general way, as a method of computing the amount to be allowed. The situation in that regard is revealed by the fact that courts have said, and no court seems to have denied, that the compensation must be fixed *in each case on its merits, as it arises.*" (Italics ours.)

In the case of *Heffron v. Rice,* 41 American State Reports, page 271, at page 277, the following appears:

> "The author (High, on Receivers), in Section 783, also lays down the doctrine that, as a general rule, the compensation should correspond with the degree of business capacity, integrity and

responsibility required in the management of the affairs entrusted to him, and that a reasonable and fair compensation should be allowed, according to the *circumstances of each particular case.*" (Italics ours.)

We take occasion to quote from the case of *Trustees v. Greenough,* 105 United States 536, cited in Opening Brief for Objecting Creditors, at page 52 thereof. We quote from page 537 of said Report as follows:

"The allowances made for these purposes (reasonable costs, counsel fees, charges and expenses) we have examined and do not find anything therein seriously objectionable. The Court below should have considerable latitude of discretion on the subject, since it has far better means of knowing what is just and reasonable than an appellate court can have." (Matter in parenthesis ours.)

We here quote from the case of *Hickey et al. v. Parrot Silver & Copper Co. et al.,* 79 Pac. 698, cited in Opening Brief for Objecting Creditors, at page 51 thereof. We quote from page 701 of said Report as follows:

"The receiver is entitled as a matter of right to the benefit of counsel, when the nature of the trust requires it; and, while he usually selects his own counsel, he cannot make any contract of hiring or agreement of compensation that is binding upon the court, for it is the function of the court to determine both the necessity for counsel, and compensation to be allowed therefor.

"The receiver is entitled to compensation for services performed by him, and the circumstances and environments of the *particular receivership* are proper to be considered in determining the amount of this compensation." (Italics ours.)

We quote further from this last named case, from page 702 thereof:

> "Evidence relative to the compensation of the receiver and the allowance for counsel fees may be admitted for the purpose of informing the Court as to what is just and reasonable under the circumstances; but, where the court has personal knowledge of all that has been done by the attorneys, it is not always necessary that it should hear evidence respecting the amount which it should allow, for a court is presumed to know the value of attorney's services, and it is for its own enlightenment that such evidence is heard."

In the case of *Stewart v. Boulware,* 133 U. S. 78, the following language is used, at page 79 of said report:

> "So far as the allowances to counsel are concerned, it is a mere question as to their reasonableness. Nor is there any doubt of the power of courts of equity to fix the compensation of their own receivers. That power results necessarily from the relation which the receiver sustains to the Court, and, in the absence of any legislation regulating the receiver's salary or compensation, the matter is left entirely to the determination of the court from which he derives his appointment.
>
> "The compensation is usually determined according to the *circumstances of the particular case,* and corresponds with the degree of responsibility and business ability required in the management of the affairs intrusted to him, and the perplexity and difficulty involved in the management. Like all questions of costs in courts of equity, allowances of this kind are largely discretionary, and the action of the court below is treated as presumptively correct, 'since it has far better means of knowing what is just and reasonable than an appellate court can have.'" (Italics ours.)

In the case of *Fidelity Trust Company v. Halsey & Smith, Ltd.,* 93 N. J. Eq. Rep. 161, at 162, among other things it said:

> "The fundamental rule is that the amount lies in the discretion of the court, having *regard to all the circumstances;* that the action of the court is *presumptively correct,* and will be *upheld if it does not plainly appear that there has been an abuse of discretion."* (Italics ours.)

When we consider the nature of the matters here administered, the amount involved, the complications attending them, the time spent by Mr. Eliassen in his office and away from his office in the State of California and away from his office outside of the State of California in connection with the work of this receivership performed by Mr. Eliassen, the skill required of him in the handling of the legal affairs of this receivership, the degree of success attained under all the circumstances, his fidelity to details, the responsibilities assumed by him as attorney for the Receivers, the character of these responsibilities, and the expedition with which he performed the services required of him in view of the results reached, all together with the testimony of the various attorneys who testified in relation to the reasonable value of these services; and when we further consider the favorable comments made by some of the largest creditors in this matter upon the services performed by Mr. Eliassen as attorney for the Receivers, as said comments are set forth in some of the letters above referred to, and the refusal of said creditors to object to the fees of Mr. Eliassen; and when we further consider the fact that Mr. Eliassen was called upon to

pay from his fees the sum of $2,650.00 (Transcript of Record, Vol. I, page 305) for the services of other Attorneys whom he employed to assist him in the northern jurisdictions; and when we further consider the allowance of $15,000.00 to Messrs. McManus. Ernst & Ernst, Attorneys for the Receivers in the Eastern jurisdictions where but a comparatively small part of the work of the Receivers was performed, we respectfully submit that the sum of $30,000.00 as a fee for his services is not only not excessive but indeed a modest charge.

This fee of $30,000.00, of course, does not take into consideration the extra and laborious work he has been called upon to perform growing out of the Objections and Exceptions filed herein by the Objecting Creditors.

All of these matters were before the Special Master when, in his report, he found the reasonable value of the services of Mr. Eliassen to be $30,000.00, and were likewise before the trial Court when it rendered its Judgment and Decree overruling the Objections and Exceptions to the Report of the Special Master and approving and confirming said Report and fixing and allowing a fee of $30,000.00 to Mr. Eliassen.

It is, therefore, further respectfully submitted that the trial Court did not err in overruling the Objections and Exceptions to the Report and Findings of the Special Master, dated January 19, 1928, relating to the fees of Mr. Eliassen; nor did the trial Court err in approving, ratifying and confirming the Report and Findings of the Special Master, dated January

19, 1928, relating to the fees of Mr. Eliassen; nor did the trial Court err in approving, ratifying and confirming the Final Accounts and Reports of the Receivers; nor did the trial Court err in allowing and fixing the sum of $30,000.00 as compensation to be paid to Mr. Eliassen as Attorney for the Receivers.

It is further respectfully submitted that the fixing of the sum of $30,000.00 as the full reasonable value of the services of Mr. Eliassen, and the Order and Decree of the trial Court allowing said sum for his said services, and directing the payment thereof to him, find ample support in the evidence and the record of this case.

It is respectfully submitted that nowhere in the Objections and Exceptions filed by the Objecting Creditors to the Master's Report is there called in question any ruling of his in admitting or rejecting evidence.

In the case of *Last Chance Mining Co. v. Bunker Hill & S. Mining & C. Co.*, 131 Fed. 579, at 587, (1904), the Court said:

> "Certain exceptions were filed by the defendants to the master's report, but none calling in question any ruling of his in admitting or rejecting evidence. Findings of fact made without any evidence to support them may, and should, as a matter of course and of law, be disregarded; *but findings made by a master in pursuance of an order to take the proofs and report the facts and conclusions of law to the court, that depend upon conflicting testimony, or upon the credibility of witnesses,* ESPECIALLY *where, as in the present case, they are approved by the trial court, will not be disturbed.*" (Italics ours.)

Citing cases:

Davis v. Schwartz, 155 U. S. 631, 15 Sup. Ct. 237, 39 L. Ed. 289;

Warren v. Keep, 155 U. S. 265, 15 Sup. Ct. 83, 39 L. Ed. 144;

Crawford v. Neal, 144 U. S. 585, 12 Sup. Ct. 759, 36 L. Ed. 552;

The Iroquois, 194 U. S. 240, 24 Sup. Ct. 640, 48 L. Ed. 955 (May 2, 1904);

The S. B. Wheeler, 20 Wall. 385, 22 L. Ed. 385;

The Lady Pike, 21 Wall. 1, 8, 24 L. Ed. 672;

The Richmond, 103 U. S. 540, 3 L. Ed. 670;

Towson v. Moore, 173 U. S. 17, 19 Sup. Ct. 332, 43 L. Ed. 597;

Smith v. Burnett, 173 U. S. 430, 436, 19 Sup. Ct. 442, 43 L. Ed. 756;

Singleton v. Felton, 101 Fed. 526, 42 C. C. A. 57;

The Columbian, 100 Fed. 991, 41 C. C. A. 150;

North American Exploration Co. v. Adams, 104 Fed. 404, 45 C. C. C. 185;

Fidelity & Casualty Co. v. St. Mathews Sav. Bank, 104 Fed. 858, 44 C. C. A. 225;

Western Union Tel. Co. v. American Bell Tel. Co. (C. C.) 105 Fed. 684;

National Hollow B. B. Co. v. Interchangeable B. B. Co., 106 Fed. 693, 45 C. C. A. 544;

Chauncey v. Dyke Bros., 119 Fed. 1, 55 C. C. A. 579;

Thallman v. Thomas, 111 Fed. 277, 49 C. C. A. 317.

The Court further states:

> "The appellants do not, and, in view of the record, could not, contend that there is no evidence to support the findings."

It is respectfully submitted that in the instant case the situation is the same, that is to say: the appellants do not, and, in view of the record herein, could not, contend that there is no evidence to support the findings of the Master.

In the case of *Midland Bridge Co. v. Houston & B. V. Ry. Co.,* 268 Fed. 931, at page 937, (1920), the Court states:

> "[4] Where the master and trial court agree on the findings of fact, they are conclusive on the appellate court, where there is any substantial evidence to support them."

Citing with approval the *Last Chance Mining Co.* case, *supra,* and also the following cases:

Mercantile Trust Co. v. Chicago, P. & St. L. Ry. Co., 147 Fed. 699, 78 C. C. A. 87;

Moffatt v. Blake, 145 Fed. 40, 75 C. C. A. 265.

In the case of *Farmers' Loan & Trust Co. v. M'Clure,* 78 Fed. 209, at page 210, the Court said:

> "It is the settled rule of the federal courts that where the court below has considered conflicting evidence, and made its finding and decree thereon, they must be taken as presumptively correct; and, unless an obvious error has intervened in the application of the law, or some serious or important mistake has been made in the consideration of the evidence, the decree should be permitted to stand. Tilghman v. Proctor, 125 U. S. 136, 8 Sup. Ct. 894; Kimberly v. Arms, 129 U. S. 512, 9 Sup. Ct. 355; Furrer v. Ferris, 145 U. S.

132, 134, 12 Sup. Ct. 821; Warren v. Burt, 12 U. S. App. 591, 7 C. C. A. 105, and 58 Fed. 101; Plow Co. v. Carson, 36 U. S. App. 456; 18 C. C. A. 606, and 72 Fed. 387. *In view of this principle, and in consideration of the great weight which ought to be given to the opinion of the trial court as to the value of the services of solicitors in cases pending before it, we are unwilling to disturb the decree in this case. Let it be affirmed, with costs.*" (Italics ours.)

APPOINTMENT OF MR. A. F. LIEURANCE, AS CO-RECEIVER WITH ARTHUR F. GOTTHOLD, OF NEW YORK, THE SERVICES RENDERED BY MR. LIEURANCE IN CONNECTION WITH THIS RECEIVERSHIP, AND THE VALUE OF SAID SERVICES.

As the records of this case disclose, Mr. Lieurance was selected by the Creditors' Committee in the eastern jurisdiction in this matter, and appointed as co-Receiver with Mr. Gotthold without any previous knowledge on the part of Mr. Lieurance that his name was even being considered by said Committee for such appointment, or that any such appointment of himself as Receiver would be made, or even that the R. A. Pilcher Co. was in financial difficulties.

There can be no doubt but that the said selection and appointment of Mr. Lieurance to act as co-Receiver in this matter was due to the following facts:

1.—The R. A. Pilcher Co. was engaged in the chain store merchandising business.

2.—Practically all of the business of the R. A. Pilcher Co. was to be done in the western jurisdictions, as all of the stores belonging to the company, sixteen in number, were located in the jurisdictions

of California, Oregon and Washington, and Mr. Lieurance resided in Oakland, California.

3.—From the very nature of this business, it was apparent to the Creditors' Committee that the best interests of the creditors required that a man be selected and appointed as Receiver who was thoroughly qualified and acquainted with this type of merchandising.

4.—The Creditors' Committee knew or had heard of Mr. Lieurance's long and successful experience in the chain store merchandising business, and realized that, by placing Mr. Lieurance in the position of Receiver in this matter, the affairs of the Receivership would be conducted in a careful, conscientious, efficient and businesslike manner.

The Creditors' Committee in the eastern jurisdiction could readily have selected the Board of Trade of San Francisco, or some one else, other than Mr. Lieurance, to conduct the business of the Receivership in the west, had it so desired.

The fact that the Board of Trade of San Francisco was not so selected, and that Mr. Lieurance was, is the best evidence that the Creditors' Committee in the eastern jurisdiction was satisfied that better results could be obtained for the creditors through the employment of Mr. Lieurance than by having the San Francisco Board of Trade, or any one else, take charge.

The record further shows that Mr. Lieurance, upon accepting the employment, proceeded without delay to thoroughly acquaint himself with the entire situation,

and, in the exercise of his judgment, and as was his right, he selected and employed, as Attorney for the Receivers in the western jurisdictions, a competent and reliable Attorney of his own acquaintance, Mr. Edward R. Eliassen, rather than the Attorney for the San Francisco Board of Trade, as suggested by Mr. Walton N. Moore, who was a member thereof, and likewise one of the creditors of the R. A. Pilcher Company, and a member of the Creditors' Committee in the western jurisdictions; he also employed Philip A. Hershey & Company, whom he knew to be capable and reliable accountants, set up his office for general control, and immediately got into touch with every detail necessary to the intelligent and efficient performance of the duties of his trust.

He filed herein a statement of his services, and the same has been supplemented by his oral testimony, and that of his Attorney, Mr. Eliassen, and the accountant, Mr. Hershey. In his testimony given before the Special Master in this matter, Mr. Lieurance relates the nature and extent of his experience in the chain store merchandising business, from which we submit that it is readily apparent that he was peculiarly well qualified to serve as Receiver herein.

The foregoing statement of services of Mr. Lieurance was offered and received in evidence at the hearing before the Special Master, and is set forth in Vol. II, Transcript of Record, at pages 735 to 798, inclusive, to which statement we respectfully invite the attention of this Honorable Court. Immediately following said statement on pages 798 and 799, Vol. II of the Transcript of Record, are certain Exhibits,

to-wit: Plaintiff's Exhibits 3, 4, 5, 6 and 7, Receivers' Exhibit 9, Plaintiff's Exhibit 10, and Receivers' Exhibit 11, the originals of all of which Exhibits are to be transmitted to the Appellate Court for use upon this appeal upon the Order of the Judge of the Court and pursuant to stipulation of the parties.

We likewise respectfully call the attention of this Honorable Court to these Exhibits, particularly Receivers' Exhibit 9, consisting of communications addressed by Receiver Lieurance to the several store managers and to Plaintiff's Exhibit 10, consisting of certain data assembled by Receiver Lieurance and sent by him to prospective purchasers of the several stores. These communications to the store managers and to prospective purchasers indicate the type of close, constant and personal attention which Mr. Lieurance gave to this Receivership.

The whole record in this case discloses beyond all question that, from the very moment of his acceptance of this trust, Mr. Lieurance realized the great responsibilities he was assuming, and determined to give, and did give, to this matter the benefit of his long experience as a successful business man, particularly his experience in the chain store line of merchandising, and earnestly and honestly put forth his every effort to the end that every dollar possible should be saved from this financial wreck for the benefit of the 687 creditors scattered throughout the United States, and to the end that whatever dividends were to be allowed them should be paid as soon as possible, and the Receivership brought to a close at the earliest possible date.

The preferred claims amounting to $5,816.34 were paid. Dividend No. One, paid December 24, 1926, was forty per cent of the general claims, and amounted to $287,517.67; Dividend No. Two, paid May 13, 1927, was ten per cent of the general claims, and amounted to $71,879.39.

A dividend of fifty per cent was paid on Simplex Shoe Manufacturing Company's adjusted claim as allowed by the Master, amounting to $437.51, making a total paid on claims of $365,650.91. Cash in the sum of $25,000.00 was sent by Mr. Lieurance to Mr. Gotthold, his co-Receiver, in the eastern jurisdiction.

CRITICISMS OF OBJECTING CREDITORS.

Counsel for the Objecting Creditors argue, in effect:

First:—That this Receivership was a very simple procedure, and required on the part of the Receiver no more than ordinary experience and ability in the merchandising business;

Second:—That, in the conduct of this Receivership, Mr. Lieurance displayed very poor business judgment;

Third:—That he should have done his own accounting;

Fourth:—That he was responsible for the amounts allowed in the eastern jurisdiction: (a) To Mr. Gotthold, as co-Receiver in this matter, the sum of $7,500.00; (b) To Messrs. McManus, Ernst & Ernst, as Attorneys for the Receivers in the eastern jurisdiction, the sum of $15,000.00; and (c) To the account-

ing firm of Leidesdorf & Co., as Accountants for the Receivers in the eastern jurisdiction, the sum of $7,700.00;

Fifth:—That Mr. Lieurance's large experience in this line of business contributed nothing to the success of this Receivership;

Sixth:—That, had Mr. Lieurance followed the suggestion of Mr. Walton N. Moore, and had handled this Receivership through the San Francisco Board of Trade, and with the aid of its Attorneys, the Receivership would have been handled much more efficiently and with better results, and that the services performed by Mr. Eliassen, as the Attorney for the Receivers in the western jurisdictions, could have been performed in one-fourth or one-half of the time devoted to these services by Mr. Eliassen.

In addition to the foregoing, the Objecting Creditors have sought to impugn the integrity and good faith, both of Receiver Lieurance and Mr. Eliassen, his Attorney.

As to the nature and extent of this Receivership, it is respectfully submitted that the chain store merchandising business is a type of business which has developed only within the last few years, and that there are but few men who, from experience, are capable of understanding its various ramifications. The work which Mr. Lieurance was called upon to perform in connection with this Receivership, we shall not take the time or space to repeat in this argument, but respectfully refer this Honorable Court to his Statement of Services above mentioned. This

Statement not only discloses the nature and extent of the work to be done, but likewise the close and constant attention given to it in all its detail by Mr. Lieurance.

It will be remembered that practically all of the work required of the Receivers in this matter was performed by Mr. Lieurance; also, that there were sixteen stores,—three in California, six in Oregon, and seven in Washington, and the Receivership was conducted in four separate jurisdictions; that there were nearly seven hundred creditors, and they were scattered throughout the United States; that the Receivership was so to be conducted that a full and complete report as to the condition of each one of these stores could be disclosed to these creditors upon call from any one of them, and that complete reports of the Receivership could be made to any one of the four Courts in the western jurisdictions promptly and accurately.

It is ridiculous to contend that any Receiver should be expected to do accounting work of this nature himself. The final account alone in this matter, as presented to the trial Court, contains some six hundred pages of items, to say nothing of the vast amount of other work required in the matter of keeping the books and records relating to this Receivership.

It is even more ridiculous to contend that, in addition to the work required of Mr. Lieurance in conducting the business of this Receivership, he should assume, or that any Receiver should assume, under like circumstances, to do the accounting work himself, or to rely upon an ordinary bookkeeper for its per-

formance. Realizing, as he did, the type of accounting work that would be required, he employed Mr. Philip A. Hershey, and we respectfully submit that the accounting records in this case fully justify such employment and the payments made to Mr. Hershey therefor.

So far as the allowances in the eastern jurisdictions are concerned, the matter of the services performed by Mr. Gotthold, Messrs. McManus, Ernst & Ernst, and by Leidesdorf & Co., those were matters that rested entirely with the Court of original jurisdiction, and were, no doubt, granted upon the showing made by these gentlemen as to the character and extent of the work they performed.

It is respectfully submitted that the contention made by the Objecting Creditors in their Opening Brief that Mr. Lieurance's large experience in this line of business contributed nothing to the successful handling of this Receivership, is positively stupid.

Concerning the San Francisco Board of Trade, and its Attorneys, it is respectfully submitted that there is nothing in this record to support the suggestion that had the Receivership been handled through the San Francisco Board of Trade, or by its Attorneys, it would have been any more efficiently or successfully handled than it has been by Mr. Lieurance, as co-Receiver, and Mr. Eliassen, as the Attorney for the Receivers in the western jurisdictions.

It appears from the record in this case that Mr. Walton N. Moore, one of the creditors of R. A. Pilcher Co., and a member of the San Francisco

Board of Trade, and Mr. Kirk, the Attorney for the San Francisco Board of Trade, were incensed because Mr. Lieurance refused to accept these suggestions from Mr. Moore, and have vented their feelings and disappointment in this regard by attacking both the good faith and the integrity of Mr. Lieurance and Mr. Eliassen. Practically one-third of the Opening Brief for the Objecting Creditors is given over to these attacks in the form of letter and telegraphic correspondence, concerning which the Special Master, in his report (Transcript of Record, Vol. I, pages 178, 179 and 180) says:

> "While as above stated, there are only three questions to be decided, the greater portion of the voluminous objections [151] which have been filed have to do with charges by the objecting creditors that Mr. Lieurance and his attorney, in obtaining orders from the various ancillary jurisdictions on December 10, 1926, and the succeeding days, fixing Receivers' and attorneys' fees *ex parte,* were guilty of violation of an existing agreement with Mr. Moore and Mr. Kirk, with duplicity toward these gentlemen and Mr. Gotthold, and with imposition and misrepresentation toward the courts that passed the orders complained of. The Master stated at the outset of the hearing (Tr., p. 2) that after reading the objections and the answer thereto he did not think these questions material in view of the fact that the orders complained of had been subsequently opened for review. Nevertheless, the subject matter was opened by Mr. Heney on the cross-examination of Mr. Eliassen. The Master's expressed opinion was referred to by Mr. Crosby, though not in the form of an objection, but Mr. Heney pressed it as cross-examination having a bearing on the weight of the testimony of Mr. Eliassen and Mr. Lieurance regarding the value of their services,—a position amplified in the opening brief, p. 15, by the addi-

> tional contention that if the charges are true the Receiver and his attorneys are not entitled to compensation for services in opposing the objections and in securing additional compensation, and also as substantiating a request by counsel for the objectors for an allowance of costs and expenses incurred by the objecting creditors. The great bulk of the testimony in this record and of the presentation in the briefs concerns this question of whether the charges of bad faith are true. I allowed the testimony at the hearing, and I shall pass upon it here, not because I believe my first impression of the materiality of the evidence was incorrect but because charges of so serious a nature against men honored by appointment as officers of the court should not be passed by, whether material to the main issue or not. [152]"

In the light of these criticisms launched by the Objecting Creditors, and their Counsel, in their Opening Brief, against the conduct of this Receivership by Mr. Lieurance, we deem it proper here to repeat the expressions:

First:—By Mr. Francis J. Heney, one of counsel for the Objecting Creditors, and who is one of the writers of the Opening Brief for Objecting Creditors herein, wherein he stated before the Special Master that the work of the Receivership has been "efficiently conducted," a statement which we submit is entirely at variance with the comments he has written in the Opening Brief upon this subject;

Second:—By Mr. Walton N. Moore, of the Walton N. Moore Dry Goods Company, one of the largest creditors of the R. A. Pilcher Company, a member of the San Francisco Board of Trade, a member of

the Creditors' Committee in the western jurisdictions, and who we believe is the leader of the Objecting Creditors herein, to-wit: "The results produced by Mr. Lieurance have been very creditable.";

Third:—By Mr. Arthur F. Gotthold, co-Receiver in the New York jurisdiction, who, in writing to Mr. Lieurance, referred to the sale of the stores made by Mr. Lieurance as, "Your splendid work in disposing of the stores."

These expressions of commendation by Mr. Heney and Mr. Walton N. Moore are absolutely inconsistent with the criticisms voiced by these gentlemen in their Opening Brief in this matter. Mr. Gotthold fully appreciated the nature and extent of the work performed by Mr. Lieurance in so successfully disposing of these stores, as the record shows that he has acted as a Receiver upon numerous occasions, and, when he described Mr. Lieurance's services as "splendid," he spoke with knowledge of what those services meant.

In addition to the foregoing favorable comments by these Objecting Creditors and their Counsel upon the work of Mr. Lieurance, we deem it proper to quote the expressions of other creditors of the R. A. Pilcher Company, wherein, without reserve, they praise the services rendered both by Mr. Lieurance and his Attorney, Mr. Eliassen, to-wit:

First:—Mr. A. V. Love, of the A. V. Love Dry Goods Company, and who himself was a member of the New York Creditors' Committee, in writing to Mr. Frazer, the Chairman of the New York Creditors' Committee, said:

"I am strongly of the opinion that these men (Mr. Lieurance and Mr. Eliassen) have done a splendid piece of work, as I have written you before.

* * * * * * *

"I want you to know that the A. V. Love Dry Goods Company, or the writer, has not been or is not a party to any objections that have been raised to these fees being paid according to the Court's order, and as you know we are one of the heaviest creditors.

* * * * * * *

"You must know that the assets of this company were on the Pacific Coast and that the work was actually done out here and that any compensation that should be rendered should be to those who did the work, and that was on the Pacific Coast by Mr. Lieurance and his attorney.

"Therefore, I sincerely hope that you will use your influence to have this unfair opposition towards Mr. Lieurance and Mr. Eliassen withdrawn." (Italics and parenthesis ours.)

Second:—The Journal Publishing Company, in its letter addressed to Mr. Lieurance, and which is in evidence in this case, said:

"The Journal, as a creditor of the estate, is well pleased with the manner in which its business has been handled and the dividend that we have received is unusually large under the circumstances." (Italics ours.)

Third:—Lowengart & Company, of Portland, Oregon, in their letter addressed to Mr. A. F. Lieurance, and which letter is in evidence in this case, said:

"We, as creditors of the Pilcher Company, have been well satisfied with the work that you and your attorney have done. The results you have obtained have been satisfactory to us." (Italics ours.)

Fourth:—The Weber Showcase & Fixture Company, of Los Angeles, California, in its letter To the Honorable, the Judge of the District Court of the United States, San Francisco, California, and which said letter is in evidence in this case, said:

> *"Our claim was probably one of the largest in this matter (being over $35,000) and we, therefore, know that this receivership possessed many complications and was very difficult to handle. These men have done a splendid piece of work, and we feel that their efforts should be recognized to the extent that nothing is done to hinder the winding up of this matter."* (Italics ours.)

Summing up these opinions as to the manner in which this Receivership was handled, the results produced, and the type of services rendered by both Mr. Lieurance and Mr. Eliassen:

The work of the Receivership was efficiently conducted;

The results produced by Mr. Lieurance have been very creditable;

He did splendid work in disposing of the stores;

These men have done a splendid piece of work;

The work was actually done out here on the Pacific Coast;

This work was done by Mr. Lieurance and his Attorney;

The compensation should go to those who performed the work;

The opposition towards Mr. Lieurance and Mr. Eliassen is unfair and should be withdrawn;

As a result of the manner in which the business has been handled, the dividend that the creditors received is unusually large under the circumstances;

The results obtained by Mr. Lieurance and his attorney have been satisfactory;

The Receivership possessed many complications, and was very difficult to handle.

The Objecting Creditors and their Attorneys, knowing of these favorable comments concerning the services of Mr. Lieurance in this Receivership on the part of the A. V. Love Dry Goods Company, seek to offset their effect by suggesting that Mr. Lieurance, as Receiver, while the stores were kept running by him, purchased large quantities of goods from the A. V. Love Dry Goods Company, and that thereby the A. V. Love Dry Goods Company made a reasonable profit, and for that reason they commended the work of Mr. Lieurance.

Mr. Lieurance, however, also bought goods during the Receivership from the Walton N. Moore Dry Goods Company, in San Francisco, and that company likewise, no doubt, made a reasonable profit thereon. It is true that he did not buy as large quantities of goods from the Walton N. Moore Dry Goods Company as from the A. V. Love Dry Goods Company, but, in this regard, it will be observed that but three of the stores in this Receivership were located in California, —one at Stockton, one at Oroville, and one at Turlock,—while seven of the stores were located in Washington, and six in Oregon. As a business proposition,

it was necessary for the Receiver, in making purchases, to consider the question of the expense of transportation.

There is nothing in the record in this case, however, to show that Mr. Lieurance, as such Receiver, transacted any substantial amount of business with the Journal Publishing Company, from which it may have made a profit, although some advertisement may have been carried in that paper, by Mr. Lieurance. There is nothing in the record to show that Mr. Lieurance purchased any goods from Lowengart & Company, of Portland, Oregon, or from Mr. Gotthold, or from the Weber Showcase & Fixture Company. Indeed, the original claim of the last mentioned company, amounting to $33,743.21, was allowed for but the sum of $16,871.60.

Surely Mr. Lieurance purchased no goods from the Attorney for the Objecting Creditors.

We submit that there is no merit in the suggestion that any of these companies or individuals were inspired or induced to extol the *labors* of Mr. Lieurance or Mr. Eliassen by any special favors done them by either of these two gentlemen.

Again, in an effort to show that there was some especially friendly relationship existing between Mr. Lieurance and Mr. A. V. Love, which prompted Mr. Love to so express himself, the Objecting Creditors, on page 50 of their Opening Brief, say:

> "By way of illustration, the Penney Company have been selling large amounts of merchandise to A. V. Love & Company at Seattle, Washing-

ton (one of the largest creditors of Pilcher & Co., Inc.) Mr. Lieurance so testified.

"Did the receivership for Pilcher & Co., Inc., as conducted by Mr. Lieurance, do likewise and and make *large sales* of goods at a profit to A. V. Love & Company? No, *on the contrary,* the receivership purchased substantially large quantities of goods from Love & Company and it is fair to infer that Love & Company made a reasonable profit upon the thing."

It will be remembered that Mr. Lieurance at one time was connected with and was a stockholder in the Penney Company, but it is submitted that the writers of the Opening Brief have, in this matter, assumed something that is not supported by the record in this case, that is, that "the Penney Company have been selling large amounts of merchandise to A. V. Love & Company at Seattle." There is no word of testimony herein that the Penney Company have been selling large, or any, amounts of merchandise to A. V. Love & Company. Mr. Lieurance did not testify that such sales were made. His testimony on this subject appears in Vol. I, Transcript of Record, at page 434, wherein he said:

"I have known Mr. Love for about ten years. I have had numerous transactions with him, for the Penney Company. The aggregate volumes of those transactions was very large. * * * It was profitable for me. I do not know whether it was profitable for Mr. Love, or not. Evidently it was, or else he would not have carried it on."

The fact is that the Penney Company was engaged in the retail business—selling to consumers, as was the

R. A. Pilcher Co., Inc., and not in the wholesale business—selling to other merchandising concerns.

It is respectfully submitted that Mr. Lieurance was perfectly justified in sending Mr. Hershey to New York, which was done with the approval of the Court. The uncontradicted evidence in this case shows that Mr. Lieurance had been endeavoring constantly for months, but without success, to procure, from those in charge of this Receivership in the eastern jurisdiction, information which was necessary to round out his accounts and reports of the Receivership in the western jurisdictions. In answer to his requests for this information, he was advised from time to time that this information was not yet ready.

The fact is, as is shown by the evidence in this case, and which was without contradiction, that when Mr. Hershey reached New York he found that *comparatively nothing had been done toward an auditing of the books and accounts of the company,* and he found it necessary to work with the accountants there for approximately two weeks, working day and night, to compile accurate and authentic statements of the various accounts as shown by the books of the company. Mr. Hershey, upon this trip to New York, further discovered that the aggregate claims against this estate approximated $740,000.00, instead of $600,000.00 as had theretofore been reported to Mr. Lieurance in the western jurisdictions.

It is further respectfully submitted that it is quite apparent that had Mr. Hershey not gone to New York it would have been impossible for Mr. Lieurance to acquire or obtain this important information.

MR. ELIASSEN'S TRIP TO NEW YORK.

In the Opening Brief for Objecting Creditors, at page 48 thereof, they say:

> "This opposition by the creditors committee made it necessary to take the depositions of Walter Ernst and Arthur F. Gotthold in New York City. Receiver Lieurance unhesitatingly incurred the expense of sending his attorney, Edward R. Eliassen, to New York City to attend the taking of these depositions."

In this regard, it is submitted that the first intimation received by Mr. Lieurance that any depositions were to be taken in New York was a reference thereto in the Objections and Exceptions to Final Account and Report of Receivers, etc., filed herein on or about July 21, 1927, wherein, in paragraph 3 thereof, under the heading: "Hearing Upon These Objections and Exceptions, Etc.", they say:

> "(a) To present the evidence in support of these Objections and Exceptions, it will be necessary to take *oral testimony,* both in California and *in New York City,* and possibly in Oregon and Washington." (Italics ours.)

It was thereafter, and on or about August 3, 1927 (Transcript of Record, Vol. II, page 731) that Notices and Affidavits for taking the Depositions of Arthur F. Gotthold, William Frazer, and Walter E. Ernst came to the attention of Mr. Eliassen, and said Depositions were noticed to be taken in New York on *August 16, 1927,* at 10:00 o'clock A. M. This testimony was to be taken on oral interrogatories.

We respectfully submit that the time to elapse between the date of the Notices of the Taking of these

Depositions, and the date upon which the Depositions were to be taken in New York, was so short, and the scope and extent of these Depositions was so indefinite, that it was absolutely impossible for Mr. Lieurance and Mr. Eliassen to properly inform any local counsel in New York in such a way as to enable such local counsel to intelligently cross-examine the witnesses whose Depositions were to be taken.

As above stated, the Objecting Creditors declared that the testimony thus to be taken in New York was to be in support of the Objections and Exceptions of the Objecting Creditors. These Objections and Exceptions were directed against the conduct of the Receivership in the western jurisdictions by Mr. Lieurance, and the actions of Mr. Lieurance, and Mr. Eliassen, the Attorney for the Receivers, in connection therewith. We, therefore, submit that it was not only necessary and proper, but also fair and just, that Mr. Eliassen go personally to New York to be present at the taking of these Depositions.

The Objecting Creditors contend that Mr. Lieurance was extravagant in his handling of this Receivership. To this charge we answer that a dividend of fifty per cent (50%) to the creditors herein is most convincing evidence that Mr. Lieurance was neither extravagant nor careless in his management.

The Objecting Creditors, at page 74 of their Opening Brief, state:

> *"At the hearing before the Master, it developed that Receiver Lieurance had subsequently paid Mr. Hershey Two Thousand ($2,000.00) Dollars additional, and this fact was unknown to the*

Creditors or their attorneys until it came out at the hearing.'' (Italics ours.)

This is but another attempt on the part of the Objecting Creditors and their counsel to discredit Mr. Lieurance.

The Final Account in this matter was filed on May 19, 1927. (Transcript of Record, Vol. I, page 240.) The Objections and Exceptions to this Account were filed subsequent thereto, to-wit:—June 27, 1927. (Transcript of Record, Vol. I, page 125.)

The item of $5,900.00 paid to Mr. Hershey appears on page 599 of this Final Account upon line 14 thereof. The item of $2,000.00 paid to Mr. Hershey appears *in the same Final Account, at page 54 thereof, line 13.*

The Objecting Creditors, and/or their counsel, surely examined this Final Account before they filed their Objections and Exceptions thereto. The item of $2,000.00 paid to Mr. Hershey was as readily discernible as was the item of $5,900.00 paid to him as shown by this Final Account. It is, therefore, respectfully submitted that there is no justification whatever for the suggestion set forth in the Opening Brief for Objecting Creditors that Mr. Lieurance, or any one else, had concealed, or had attempted in any way to conceal, from the Objecting Creditors, or their counsel, the above mentioned payment of $2,000.00 to Mr. Hershey.

We have heretofore set forth in this Brief the Order and Decree of Honorable Augustus N. Hand, approving and confirming the Final Account and Report of the Receivers in this matter in the New

York jurisdiction, and discharging the Receivers, and canceling and discharging their bond; also, the telegram from Mr. Arthur F. Gotthold, co-Receiver in New York, showing all claims heard before Judge Cardozo disposed of, and further showing that the moneys directed to be paid by said Order of Judge Hand of December 10, 1928, to have been paid, and that that Order finally discharged equity Receivers upon making these payments. This disposed of the matter of the disputed claims of $10,000.00 referred to on page 46 of the Opening Brief of the Objecting Creditors.

Inasmuch as the Objecting Creditors have requested this Honorable Court to reduce the allowances to Mr. Lieurance and to Mr. Eliassen, urging, as one of their grounds therefor, that moneys should be reserved to pay these disputed claims, we deem it proper, and in the interest of justice, that this Honorable Court be advised of this action of Judge Hand in making the above mentioned Order and Decree.

ATTACKS OF OBJECTING CREDITORS UPON THE HONESTY, INTEGRITY AND GOOD FAITH OF MR. LIEURANCE AND MR. ELIASSEN.

An examination of the Objections and Exceptions filed herein, and of Exhibit "A" attached thereto and made a part thereof shows these gentlemen to be charged therein with violating an arrangement and agreement; with making representations which were misleading and deceptive; with concealing material

matters from the Court and with intentionally misleading the Court.

These or like charges and insinuations against Mr. Eliassen and Mr. Lieurance have been carried into the Opening Brief of the Objecting Creditors herein. They ask this Honorable Court to believe that these two gentlemen imposed upon, misled and induced four different United States District Judges to award them exorbitant fees.

It is submitted that Mr. Lieurance came into this position of Receiver, after a long, successful and honorable business career, and the manner of his selection and appointment, all without any knowledge on his part, stands as convincing evidence that his reputation for honesty, integrity and good faith is of the best. From the letter of Mr. Frazer to Mr. Moore, shown on page 30 of the Opening Brief herein, we quote the following in relation to the reputation of Mr. Lieurance:

> "Ernst told me over the telephone yesterday that he had received a wire from Lieurance stating that as far as he was concerned he did not intend to ask for any definite amount of compensation, but intended to leave it absolutely to the fairness of the Judge. I do not feel that I wish to criticise Mr. Lieurance's attitude because *I have a very high regard for his ability and other qualifications about which I have been so favorably informed.*" (Italics ours.)

Mr. Eliassen, after approximately thirty years' active practice in the legal profession in the various Courts of the State of California, likewise entered

upon the discharge of his duties in this Receivership without a single blemish upon his reputation.

It seems, however, at the close of their labors, which the record in this case shows beyond all question were ably and conscientiously performed, and when the Court was called upon to determine what compensation should be awarded them, that, for the sole purpose of attempting to minimize the value of their services, their reputations for truth, honesty and integrity are for the first time to be challenged. Perhaps neither of these gentlemen is personally known to this Honorable Court. They were examined and cross-examined before the Special Master at the hearing of these Objections and Exceptions, and we are satisfied that the Findings of the Special Master in this matter with regard to the services performed by these gentlemen, and the value thereof, were based not only upon the substance of their testimony, and that of each of them, but upon the forthrightness with which each of these gentlemen testified upon the witness-stand, and that the Special Master was convinced, after hearing this cause, that all of the insinuations and direct charges of the Objectors and Exceptors, and their counsel, against the integrity and good faith of these gentlemen, were each and all absolutely groundless and without any support whatsoever.

The facts, briefly stated, concerning the *ad interim* allowances, are as follows:

Applications were filed in the eastern jurisdiction for an Order directing the payment of a forty per cent (40%) dividend to the creditors, and for *ad*

interim allowances to the Receivers and Messrs. McManus, Ernst & Ernst. In the telegram dated December 8, 1926, set forth on page 16 of the Opening Brief, we find the following closing words:

> "Please get in touch with Love see Lieurance and Eliassen find out if possible what charges will be Stop *Advise results by wire* because we want to include your views in recommendation to Judge Hand." (Italics ours.)

From this telegram, it is apparent that William Frazer, the Chairman of the New York Creditors' Committee, was in a hurry for this information.

In the telegram appearing at bottom of page 15 of the Opening Brief, Mr. Arthur F. Gotthold, in his wire to Mr. Lieurance, says:

> "I shall be glad to know your views as to allowances to receivers and counsel *as soon as possible.*" (Italics ours.)

This wire again shows the need of immediate action. In a telegram from Messrs. McManus, Ernst & Ernst to A. F. Lieurance, appearing at pages 14 and 15 of the Opening Brief, we find the closing words:

> "At request Creditors' Committee no allowances were fixed for receivers or counsel until receiving some indication from you what *aggregate* amount you and Eliassen will request from Western jurisdictions. Will you please wire us approximately what *aggregate allowances will be so requested.*" (Italics ours.)

It will be noted that Messrs. McManus, Ernst & Ernst desire to know the *aggregate* of these allowances.

In the telegram from A. V. Love to A. F. Lieurance, appearing on page 15 of the Opening Brief, we find the following closing words:

> "Judge Hand has asked for our views and suggestions. Please *wire me* amounts you and Mr. Eliassen expect." (Italics ours.)

This telegram again shows the need for immediate action.

In his telegram of date December 9th, to Mr. Frazer, appearing at page 16 of the Opening Brief, Mr. A. V. Love states:

> "Talked to Lieurance long-distance today. He will not suggest amount of fees. Says will be satisfied with courts order."

In the telegram from Mr. Lieurance to Messrs. McManus, Ernst & Ernst, page 15 of the Opening Brief, Mr. Lieurance states:

> "No amount on account for attorneys and receivers in ancillary jurisdiction will be suggested by us. However, will ask for allowances on account, but amounts will be left entirely to discretion of courts. Feel this best and most fair method to pursue. Have not slightest idea of what courts will do, but feel they will be fair to both creditors and ourselves."

Thus we find Messrs. McManus, Ernst & Ernst fully informed that Mr. Eliassen and Mr. Lieurance would not make any estimate of what the *ad interim* allowances in the west would be, as they were to be left entirely to the judgments of the Courts.

In Exhibit "A" attached to the Objections and Exceptions in this matter, and appearing in Vol. I,

page 109, Transcript of Record, there is set forth what purports to be a telegram dated December 9, 1926, addressed to William Frazer, signed by Walton N. Moore. A very vital portion of this telegram was omitted, a portion which was dictated by Mr. Lieurance, and is as follows:

> "As you now know from yesterday's telegrams from Lieurance to Gotthold and Attorneys McManus, Ernst & Ernst, receiver Lieurance and attorneys in ancillary jurisdiction intend leaving amounts of allowances to discretion of ancillary courts."

Counsel for Objecting Creditors, while cross-examining Mr. Eliassen before the Special Master, read this telegram, but, in so doing, neglected to read these concluding words of the telegram until pressed to do so by counsel for Mr. Lieurance and Mr. Eliassen, all of which appears on pages 152 and 153 of the Reporter's Transcript of date October 19, 1927. From these telegrams, it is readily seen that Mr. William Frazer, Chairman of the New York Creditors' Committee, as well as Mr. Gotthold, Messrs. McManus, Ernst & Ernst, Mr. Walton N. Moore and Mr. A. V. Love, were all fully informed on December 9, 1926, that the question of the allowances in the western jurisdictions were not to be fixed or determined by conferences between these gentlemen and the creditors or Creditors' Committees, but were to rest entirely in the discretion of the various Courts in the western jurisdictions.

After the meeting at Mr. Kirk's office on December 9, 1926, mentioned on page 21 of the Opening Brief,

and, in accordance with the understanding there reached, and for the purpose of learning what the *aggregate ad interim* allowances in the western jurisdictions would be, Mr. Lieurance and Mr. Eliassen proceeded the following day with their applications to the United States District Court at San Francisco for Orders declaring a dividend of forty per cent (40%) to the Creditors, and for *ad interim* allowances. Thereafter, they proceeded immediately to the northwest, where they filed like applications and procured like Orders declaring a dividend of forty per cent (40%) to the creditors, and *ad interim* allowances. Immediately upon these matters being determined by the various Courts in the western jurisdictions, the telegram referred to on page 32 of the Opening Brief, from Mr. Lieurance to Mr. Moore, was forwarded to Mr. Moore.

As hereinbefore mentioned, a controversy exists between Mr. Kirk and Mr. Moore on the one hand, and Mr. Eliassen and Mr. Lieurance on the other, as to what understanding was reached between them in regard to these matters at Mr. Kirk's office on December 9, 1926. There is no doubt whatever but that these gentlemen honestly disagree as to what understanding was really reached. There can be no doubt, however, but that the understanding was that the *aggregate ad interim* allowances to be made in the west should be determined *promptly* and reported to the eastern jurisdiction, and it was likewise clearly understood that the applications for the dividends to the creditors should be made *at once,* and we submit that it is only reasonable that, to avoid two journeys

into the northwest, the applications for *ad interim* allowances should be made simultaneously with those for the Orders declaring the dividends.

But, as we have hereinbefore stated, the aggregate of these *ad interim* allowances was reduced by Stipulation of the parties, and the final fixation of fees of Mr. Lieurance and Mr. Eliassen was made by the United States District Court in and for the Northern District of California, Southern Division, after the hearing of these Objections and Exceptions before the Special Master, and upon his report and findings.

In his letter of January 10, 1927, to Mr. E. J. Hopkins, Credit Manager for Roberts, Johnson & Rand, hereinbefore referred to, Mr. Lieurance, while opposing the setting aside of the Courts' Orders fixing these *ad interim* allowances, states, among other things:

> "However, we are not opposed to a review of this situation, and are ready and willing to go before all of the Judges in open Court, in the presence of any and all creditors, and have the matter re-viewed. If the Courts see fit to change their decisions, we shall abide by such decisions with grace, and if the Courts still feel that the compensation and fees allowed are fair and equitable, we shall be content to let them stand as they are. We have indicated this to both Mr. Moore and Mr. Kirk, and have expressed our willingness to have this matter re-viewed at any time, which suits their convenience or the convenience of other creditors."

Needless to say, in whatever walk of life we find ourselves, a good reputation for truth, honesty and integrity is the most valuable asset we can possess. A man's good name is quite as dear to him as life

itself. He is entitled to protection from all unwarranted and unfounded attacks against it. There is nothing whatever to be found in the entire record in this case which can be justly construed as furnishing the slightest support for any of these charges and attacks made upon the truthfulness, honesty or integrity of either Mr. Eliassen or Mr. Lieurance.

WHEREFORE, it is respectfully submitted:

1. That none of the fees allowed in this matter are grossly, or at all excessive;

2. That the trial Court did not err in any of the particulars set forth by appellants in their Assignment of Errors;

3. That there was no abuse of discretion on the part of the trial Court in this matter;

4. That the judgment and decree of the trial Court of March 27, 1928, should be affirmed without modification;

5. That appellants should be denied any costs herein;

6. That appellees should be allowed their costs herein incurred.

Dated, Oakland,
December 4, 1929.

Respectfully submitted,

EDWARD R. ELIASSEN,
CROSBY & CROSBY,
Attorneys for Receiver
A. F. Lieurance, and
Edward R. Eliassen
Attorney for Receivers.